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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 929.

D. M. RUSSELL, W. H. STOVALL, H. P. REID, ET AL., APPELLANTS,

vs.

J. W. STANSELL, SURVIVING PARTNER OF PARTEE & STANSELL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF MISSISSIPPI.

FILED SEPTEMBER 27, 1881.

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a United States district court, northern district of Mississippi.

Proceedings had in the district court of the United States for the northern district of Mississippi, at the court-house in Oxford, Miss., and at chambers in Jackson, Miss., on, to wit, the 3d day of February, 1880, and days subsequent thereto, in the following cause:

D. M. RUSSELL ET AL., TAX-PAYERS, &C., appellants,
vs.
J. W. STANSELL, SURV. PART., &C., S. GWIN, auditor, and W. L. Hemingway, treasurer of Miss., & ex-officio levee com'rs et al., appellees.

Henry Craft, of Memphis, Tenn., A. M. Clayton, of Lamar, Miss., and Wiley P. Harris, of Jackson, Miss., sol's for appellants and H. T. Elliott, of Memphis, Tenn., sol. for appellees.

1 *Petition.*

UNITED STATES OF AMERICA:

To the honorable Robert A. Hill, judge of the district court of the northern district of Mississippi:

The petition of Jeptha W. Stansell respectfully shows that, as surviving partner of the firm of Partee & Stansell, he recovered a judgm't in the said district court for the sum of 71,623.67 dollars on the 19 day of June, 1879; that this judgment was rendered on a claim for work done in the construction and repair of levee, under a contract made with the levee board of Mississippi, district No. 1, a district created by an act of the legislature of the State of Mississippi, approved 17th of March, 1871, which said board was created a corporation by that act, with power to make contracts for the construction and repair of levees of the said district, and with power to sue and capacity to be sued. Petitioner further shows that in order that contractors for levee work might have assurance of payment, the legislature, by section 8 of the said act of 1871, made the expense of construction and repair of the levee in the said district a charge upon the lands of the district,
2 so as to give to the contractors for levee work a charge on the lands, as petitioners are advised, which should continue until the cost of the levee work should be fully paid; and in order to the due apportionment of the said charge the legislature made it take the form of an annual ad valorem tax, and made a valuation of the lands of the district aforesaid, discriminating between improved and wild lands, and cleared and fenced lands not cultivated, and those in actual cultivation; and on this valuation a tax of two per cent. ad valorem was levied, to continue for twelve years.

Petitioner further states that the said board was empowered to borrow money and issue negotiable bonds as a resource for the payment of contractors for work, and by a provision of the act the bonds negotiated were to be prefer'ed in payment from the tax to all other demands; but it was sufficiently apparent to the legislature, from an exhibit which the tax-payers of the district made to the legislature, that the preferred tax would yield a sum exceeding $150,000.00 per annum, and pe'tioner believes and affirms that the annual tax levied

3 would, if it had been fairly and honestly paid, have made a fund sufficient to pay the cost of construction and repair of the levees of the said district.

Petitioner further states that the work done by the said Partee & Stansell was completed in 1872, but the said board contested the claim, and petitioner instituted a suit in the said district court in order to have the claim judicially settled, and after a baffling litigation of six or seven years petitioner recovered his judgment aforesaid; and on making demand of the existing board of the said district, to wit, the auditor and treasurer of the State of Mississippi, they refuse to pay any part of the judgment, saying that the annual tax as collected was insufficient to pay the interest and principal of the bonds issued by the said levee board.

Petitioner further states that from the very outset the tax-payers of the district have failed to pay the tax on their lands as rated, and by various devices have eluded the provisions of the law, and have in point of fact, as a general rule, paid only about one-half the annual charge on their lands, by an unfair and unfaithful exhibit of their

4 lands according to the classification fixed by law.

Petitioner further states that the present representatives of the district, to wit, the auditor and treasurer of the State of Mississippi, refuse to take any steps to collect the tax assessed by the act aforesaid, that is to say, they refuse to take any measures to collect from recusant tax-payers the amounts for which they are liable for the annual tax, running through the whole period from 1871 down to the present year; and petitioner believes, and so states, that in order to a just settlement of the charge placed upon the lands, as before stated, it will be necessary that commissioners shall be appointed by the court or judge, as provided in section 10 of the said act, who shall be charged to collect back taxes, or unpaid taxes from which the lands assessed have not been discharged; that the duty of making the investigation cannot be discharged efficiently otherwise than by an officer of court, protected by its authority and governed by its instructions.

Petitioner therefore asks a remedy that the judgment of the

5 said court may not be in vain. There is nothing tangible to be reached by ordinary process on said judgment, and for the reason assigned there are no funds in the hands of the present levee board with which to pay petitioner's debt.

Petitioner therefore prays the honorable judge of the district court aforesaid to employ the powers granted in the act aforesaid as the only means by which he can get satisfaction of his said judgm't; and prays that proper notice be ordered by the honorable judge to be served on the said auditor & treasurer to show cause against the prayer of petitioner, if any they have, on such day as the judge may seem proper.

J. W. STANSELL,
By W. P. HARRIS, *Sol'r.*

Exhibit to foregoing petition.

District court of the United States, northern district of Mississippi.

PARTEE & STANSELL
vs.
LEVEE BOARD OF MISSISSIPPI, DISTRICT No. 1.
} Exhibit. Abstract of decree.

Decree June 19th, 1879, for $71,623.67. Interest, 6 %. Cost, 213.05.

I, G. R. Hill, clerk of the district court of the United States for the northern district of Mississippi, do hereby certify that the above is a true and correct abstract of a decree of said court in favor of J. W. Stansell, surviving partner of the firm of Partee & Stansell, and against the levee board of Mississippi, district No. 1, and that said decree is wholly unpaid and unsatisfied, as appears from the records of said court.

Given under my hand and the seal of said court, at Oxford, the 19th day of January, 1880.

[L. S.] G. R. HILL, *Clerk.*

Filed Feb'y 3, 1880. G. R. Hill, clerk.

Endorsed on the foregoing petition is the following order, to wit:

Order to show cause.

It is ordered in the foregoing case that S. Gwinn, auditor of public accounts of the State of Mississippi, and W. L. Hemingway, treasurer of said State, appear before me, in the United States court-
7 room, in the city of Jackson, on 7th day of this month, and show cause, if any they have, why the prayer of the foregoing petition shall not be granted. It is further ordered that said auditor and treasurer shall be served with a copy of said petition and this order three days before the day above fixed for the hearing of said application.

Ordered this February 3d, 1880.

R. A. HILL, *Judge.*

On the 7th day of Feb'y, 1880, an answer was filed to the foregoing petition in the words following, to wit:

Answer.

UNITED STATES OF AMERICA,
Northern District of Mississippi:

In the district court of the United States, to the term, 1880.

To the honorable Robert A. Hill, judge of said district court, sitting in equity:

The answer of Wm. L. Hemingway, treasurer, and of Sylvester Gwin, auditor of the State of Mississippi, and ex-officio board of levee commissioners for district No. 1, to the petition of Jeptha
8 Stansell, herein exhibited against them on the 3rd day of February, 1880, answering, says:

They admit the organization of said levee board, and the recovery of the judgme't against it by petitioner, as stated in said petition, and also the provisions of the said act of 17th March, 1871, as stated in said petition. They deny that they have refused to take steps to collect from recusant tax-payers the taxes assessed by said act, if by that assertion in said petition it is meant that they did fail or refuse to collect said taxes as they were officially certified by the proper officers were collectic*a*ble & due; and they say, further, that the statutes conferred on them no authority to revise or correct the assessment-rolls handed them from those sources.

They state, further, that, from information recently obtained, they have cause to believe it to be true that large amounts of taxes assessed by said acts have not been properly rendered, and have consequently not been collected. If that be true they are equally desirous with petitioner for the collection of such unpaid taxes, and submit that matter to the orders of the court.

Further, they state that they are making arrangements to ap-
9 peal from said judgment to the Supreme Court of the United States, to effect, if they can, a reversal thereof; and they object to the payment of said moneys to the petitioners until that question is determined, but ask the court to make such orders for the safe keeping of the fund in litigation, when collected, as may be proper; and now, having fully answered, they pray to be hence dismissed, &c.

LAMAR, MAYES & BRANHAM, *Sol's.*

Filed Feb'y 7, 1880. G. R. Hill, clerk.

And afterwards, to wit, on the same day, the following decree was made by the court in said case, to wit:

Decree for mandamus, &c.

Before the honorable R. A. Hill, judge of the district court of the United States for the northern district of Mississippi, sitting at chambers in Jackson, on the seventh day of February, A. D. 1880.

JEPTHA W. STANSELL, SURVIVING PARTNER of the firm of Partee & Stansell, complainants & petitioners,
against
S. GWIN & W. L. HEMINGWAY, AUDI-
10 tor and treasurer of the State of Mississippi, ex-officio levee board of the State of Mississippi, district No. 1, defendants.
} Petition for mandamus & commissioners, &c.

Be it remembered that this cause came on this day to be heard upon the petition, answer, proofs, and exhibits, and his honor the judge, being of opinion that the petitioner is entitled to the relief prayed in so far as hereinafter allowed, doth consider, order, adjudge, and decree as follows: 1st. That the said defendants, as commissioners of levee board of the State of Mississippi, district No. 1, and commissioners of this court, be, and they are hereby, ordered and compelled to have collected and paid over the charges and assessments created and levied by the provisions of an act entitled "An act to redeem and protect from overflow from the river Mississippi certain bottom-lands herein described," approved March 17th, 1871, and heretofore unascertained and unpaid by the tax-payers within said levee district No. 1, as organized by said act, and in manner provided by said act, except as herein-
after directed. 2. That in order to ascertain the amount of back
11 charges and assessments levied by said act upon the lands lying within the limits of said district which now remain due & unpaid, the said defendants, as levee commissioners of said board and commissioners of this court, be, and they are, authorized, required, and compelled to appoint within each county included in said levee district a levee-tax assessor and collector, who shall enter into bond, with security and in the penalty prescribed by them, and payable to them, and

conditioned that they will well and truly assess and collect the charges and assessments levied by said act, and whose duty it shall be to assess and collect the said charges and assessments in the time and manner required by law. Said assessors and collectors shall visit all resident holders & owners or persons in possession of lands in said district and demand a statement, under oath, sitting forth the number of acres which they respectively own and occupy, and the number owned and occupied during each year from and including the year eighteen hundred and seventy-one up to the present year, and on which they are chargeable under said act, the number of acres cleared and uncleared, the number under fence and the number under cultivation
12 during each of said years, and shall make a tabulated statement thereof as given in, unless they are satisfied that the statement so given in be incorrect, in which event they may make such changes therein as the facts warrant, notifying the parties respectively of the change, so that they may have opportunity for contesting the same before the defendants and this court in this case. In case such owners or occupants fail to file with said assessors said statements the party shall be chargeable as required by said act, and the assessment shall be made by said assessor according to the facts. Said assessors shall complete and forward said tabulated statements, and the statements of parties assessed under oath, to the defendants, as levee commissioners and commissioners of this court, on or before the first day of September next; and the said defendants shall thereupon place upon the face of said lists the amount of taxes due and owing upon said lands, the amount actually paid, and the balance remaining to be paid, including the tax of the current year, and shall without delay forward fair copies of said completed lists to the several assessors and collectors of
13 taxes appointed by them under this order. Immediately upon the rece'pt of such completed lists said collectors shall forthwith proceed to collect all back taxes, and in case of default shall coerce payment thereof in the manner required by law. Said defendants shall, as far as practicable, appoint the sheriffs of the counties within the said levee district No. 1 as assessors and collectors of said levee taxes under this order, if they are willing to give the bond required and undertake the duty prescribed by this order.

3d. That the said defendants, as levee commissioners and commissioners of this court, shall require payment in cash by the land-owners within said levee district No. 1 of fifty per cent. of said back taxes, and fifteen per cent. of the total back taxes due in addition, to pay the costs of assessment and collection, and of executing this order, and the costs of this cause, and of the preparation of assessment lists, &c. The balance of said back taxes may be collected in the bonds and coupons heretofore issued by levee board, district No. 1.

4. That the said defendants be, and they are hereby, required and compelled to procure and forward to the assessors & collectors ap-
14 pointed by them tabulated assessment lists and printed statements for land-owners, &c., as required by this order, the cost of which may be paid out of any money heretofore collected by them under this order, and to use all despatch in the discharge of their duties under this decree and order. They will make report of their proceedings under this decree from time to time, and may ask at any time the interposition of this court in all cases in which any obstruction may be placed by parties in the way of a fair execution of this decree and order.

5. That any person conceiving himself aggrieved by the action of said

commissioners may, by petition to this court, present his grievance and obtain such redress as he may be fairly entitled to.

6. That in all cases in which lands are wild and the owners thereof are not known said assessors may assess the same to unknown owners, and when the same facts exist as to cleared lands, and there is no one in possession thereof to make the written statement under oath above called for, said assessor shall ascertain the necessary facts in the premises and make the assessment to unknown owners.

7. That said commissioners in all cases of serious doubt as to
15 the amount due by any lands in said district No. 1, or the owners thereof, may compromise with the parties and accept such sum as may be reasonable from such owners, subject to the approval of this court; that shall prepare a form for tabulated assessments and submit the same for approval to the solicitors of defendants, or to this court if there be any objections thereto, and shall hold the money collected by them under this decree subject to the order of this court.

8. That the papers in this cause be returned by the clerk of the district court for the southern district to the clerk of this court, at Oxford, and filed, and that he thereupon issue a certified copy of this decree to defendants, and the mandatory injunction directed to and commanding them forthwith and with due despatch to carry this order and decree into execution.

9. That the assessors and collectors under this decree shall be allowed seven per cent. in currency of the amount assessed and collected by them, the commissioners five per cent. in currency of the amount received and disbursed by them under this decree, and the residue of said fifteen per cent. shall be held by said commissioners for payment of costs, &c., &c.

10. That the services to be performed under this decree by
16 the said commissioners shall not be so construed as to require them or either of them to incur any charge or expense which can not be by them provided for, to be paid out of the proceeds of the fund herein directed to be collected, or not provided for by the petitioner herein. And in no event are they be required to incur any personal cost or liability or to impose any charge or liability on any funds in their hands, or to be in their hands in their official capacity other than the fund already herein indicated.

11. That no lands held by the State or the liquidating levee board exempt from taxation under the provisions of said act of March 17, 1871, shall be included in the tabulated assessment lists required by this decree, but all such lands shall be exempt from taxation and tabulation under this decree.

Ordered, adjudged, and decreed this 7th day of February, A. D. 1880.

R. A. HILL, *Judge*., &c.

And on the 9th day of February, A. D. 1880, a mandamus writ was issued in the words & figures following, to wit:

17 *Mandamus.*

The President of the United States to W. L. Hemingway, treasurer, and S. Gwin, auditor of the State of Mississippi, and commissioners of the district court of the United States for the northern district of Mississippi, and to the marshal of the southern district of Mississippi, greeting:

Whereas in our district court of the United States for said district,

on the 7th day of February, A. D. 1880, in a certain cause in said court, wherein Jeptha W. Stansell, surviving partner of the firm of Partee & Stansell, is complainant & petitioner, and S. Gwin & W. L. Hemingway, auditor & treasurer of the State of Mississippi, ex-officio levee board of the State of Mississippi, district No. 1, are defendants, a decree was rendered (a duly-certified copy of said decree has been furnished you, the said defendants, as therein required) wherein & whereby you, the said defendants, were directed to speedily do and cause to be done certain things in said decree fully set forth:

You, the said defendants, are therefore hereby by us commanded that you forthwith and with due dispatch carry said order &
18 decree into execution fully in all respects as required by said decree, & that this writ be returned to the clerk of district court for the northern district of Mississippi on or before the 1st Monday of June next, with the service thereof indorsed hereon.

Witness the Hon. R. A. Hill, judge of said court, & the seal thereof, at Oxford, in said district, date of issue.

Issued Feb'y 9th, A. D. 1880.

[L. S.] G. R. HILL, *Clerk.*

Upon the foregoing writ appears the following endorsement:

We acknowledge service on the within.
Feb'y 13th, 1880.

W. L. HEMINGWAY.
S. GWIN.

And afterwards, to wit, on the 1st day of February, 1881, a petition for injunction by the tax-payers was filed, which is in the words & figures following, to wit:

Pet. for injunction.

To the Hon. R. A. Hill, judge of the district court of the United
19 States for the northern district of Mississippi, sitting in chancery in Jackson, Miss.:

IN THE CASE OF JEPTHA W. STANSELL, surviving partner of the firm of Partee & Stansell,
against
S. GWIN & W. L. HEMINGWAY, AUDITOR AND treasurer of the State of Mississippi; ex officio levee board of the State of Mississippi, district No. 1.

The petition of D. M. Russell, W. H. Stonall, and H. P. Reid, now by leave of the court filed in the above-stated cause, respectfully show' to the court:

Petitioners are themselves residents, citizens, and tax-payers of the county of Coahoma, in the State of Mississippi, which county is embraced in said levee district No. 1, and each of them is the owner of lands in said county subject to taxation under the provisions of an act to redeem and protect from overflow from the river Mississippi certain bottom lands herein described, approved March 17th, 1871, and against the said lands of each of them claims for unpaid taxes are now being asserted and sought to be inforced under decree of this court

heretofore entered in the above-entitled cause, to be presently herein more fully referred to. In addition to this their individual character and position in the premises these petitioners have been appointed an executive committee—petitioner D. M. Russell being chairman—by a mass-meeting of the tax-payers of the said county of *the said county of* Coahoma, whose lands are sought to be subjected under the decree aforesaid to a burden, as in said decree rated, to appear in the cause aforesaid in the name and on the behalf of all of the tax-payers of said county. So it is that petitioners do now, as individual tax-payers of said county feeling themselves aggrieved, and as an executive committee representing all of the tax-payers of said county of Coahoma similarly aggrieved, present themselves in the above-recited cause. They come under the general right secured to all citizens to be heard in the courts in defence of their property against any judicial proceeding therein directed against it; and they come, too, under the provisions and in relation of the clause of said decree numbered 5, in which it is recited "that any person conceiving himself aggrieved
21 by the action of said com'rs may, by petition to this court, present his grievance and obtain such redress as he may be fairly entitled to."

As petitioners are informed and believe, Partee & Stansell recovered their decree or judgment in this cause in the name of Stansell, as surviving partner, for work alleged to have been done by them in the construction of levees in said district No. 1 under the employment of the levee board constructed by the act of 1871 aforesaid. Their claim was not as holders of bonds or coupons issued under the provision of said act, nor was it upon any obligation of said board to pay money borrowed, but it was distinctly and only for work and labor done for the said board. Beyond this specification of the character of their claim, petitioners do not now further allege as to the priority or the merits of the litigation between said Partee & Stansell and said levee board, in which the decree was finally rendered against said board; but they do expressly ask permission, and claim the right, so far as may be requisite for their full protection in the premises, to invoke the con-
22 sideration of the court in their behalf and, as affecting them, of the whole record of the cause in which this petition is filed. It is pertinent just here, and should be borne in mind, that petitioners and those whom they represent were not parties to, nor in any way represented in, the said litigation. Petitioners are informed and believe that when the decree was pronounced in favor of Partee & Stansell or the survivor of them, the said levee board took an appeal therefrom, feeling aggrieved by it, to the Supreme Court of the United States, and that said appeal is now pending, undisposed of, in said Supreme Court. Petitioners are informed and believe that, owing to the magnitude of the amount awarded by the decree, the said board was not able to give bond to the end that the appeal should operate as a supersedeas. After that decree had been rendered and appealed from, a petition was presented, as this petition is, to the hon. judge of this court at chambers, in Jackson, Miss., on 7th Feb'y, 1880, asking, on behalf of the survivor of said Partee & Stansell, that mandamus issue
23 against said levee board, as now constituted, to proceed to collect certain taxes alleged to be in arrear under said act of the Miss. legislature of 1871. That petition is not, nor has , accessible to petitioners, but the order or decree made upon it by your honor at chambers and in vacation and at Jackson is, by copy, herewith exhibited as part hereof, marked Exhibit A. Petitioners have been informed and be-

lieve that the said order or decree upon said petition was consented to by the defendants now constituting ex officio said levee board, or at any rate that no opposition was made thereto, and that in the sense of being a consent or unopposed decree it is not the expression of the judicial mind or an adjudication of the matters involved. The taxpayers, the parties most interested, were certainly not represented when the decree was made, and have heretofore had no opportunity to be heard in regard to it. Hence the propriety of the clause quoted above, allowing them to correct, by petition filed in the cause,
24 any grievance thereunder of which they may complain, and hence the confidence with which they now, and in this form, seek redress.

Petitioners are advised in reference to the powers and the practice of this court that application can be made to it and considered by it for relief by mandamus only upon a nulla bona return of execution regularly issued under the judgment sought to be enforced; that the petition for mandamus is regularly a pleading filed in the cause, and that a mandamus nisi is the proper process to be issued under it, by which the defendants are required to come into court on a return day named and allowed to show cause, &c.; and that not until these preliminary proceedings have taken place, and not otherwise than in open court, and as part of the regular business of a term of the court, can a peremptory mandamus issue. It is believed and now charged by petitioners that in all these respects and requirements this decree of mandamus herein is unsupported and should be considered void; not helped by any consent that may have been given, at least not so helped when the consent does not appear, and is notre-
25 cited as the ground for the irregular action.

These petitioners do aver for themselves as matter of fact, and as matter of information & belief they make the same averment for those whom they represent, that they know nothing whatever, actually or constructively, of the petition for mandamus or of the order made upon it. And just here they will add that while they have since heard generally of the proceeding and have known that certain officers were claiming to act under it they have not known what those officers would report nor what burdens would be sought to be imposed upon them until now; not until now, or very recently, have they known what assessments would be made upon them or in what form they would come; and consequently they have not sooner been able to ask the relief now sought upon all of the grounds which are now set out.

It is not the purpose of petitioners, or those in whose behalf they speak, to assail the act aforesaid of 1871 creating district No. 1, or to seek escape from any of its legitimate burdens. The' are advised, ho'-ever, that the said act and its terms and provisions constitu'e the
26 measure and full intent of their liability in the premises, and equally constitute the measure and define the extent of the power of this court in dealing therewith.

Said act of 1871, in section 10 thereof, designates "the judge of the circuit court, or of the chancery court of any district included in the levee district," as the depository to issue mandamus or appoint commissioners to secure collection of unpaid assessments. It is submitted that this designation is an exclusion of this court & the judge thereof from the exercise of that power. This section provides for the exercise of this power when "the holder of any bond or obligation of said board which may be due and unpaid may apply." And it is submitted that in connection with the context this section gives the power

only on the application of a holder of the bonds or of an obligation for money borrowed, and by this designation excludes from its benefit creditors at large for works and labor done—such as Partee and Stansell were. This section certainly denotes in the binding terms of a contract all assessments to be collected under the act to use, first, in payment
27 of any bonds that may be sold or used as before provided under this act, and of any moneys that may be borrowed under its provisions; second, for the payment of any other debts or liabilities of said board; and if this provision, with the subsequent provision as to the person who may apply for mandamus, does not exclude Partee & Stansell, it is submitted that, at least, it makes the non-existence of bonds or debts for borrowed money enough under the primary use to exhaust the unpaid assessment, a jurisdictional fact necessary to be aver'ed as the basis of an application for that belief by Partee & Stansel, or other such credetors. Petitioners aver as matter of fact, upon their information and belief, that the said levee board did issue the full amount of one million of bonds authorized by said act, with coupons of interest at the rate of 8 per cent. attached; and that a large amount, say $500,000.00, of said bonds and coupons are now due and still outstanding and unpaid. Under the provision of said act of $1871, sec. 9, "Said bonds or coupons shall be receivable after maturity, at par, in payment of any charge or assessment fixed, levied, or made by this act." Thus
28 far the assessments under this act have been paid wholly or mainly in said bonds or coupons—chiefly, petitioners believe, in the coupons—and the reght to use them in such payment has given the bonds and coupons a market value, perhaps their sole market value. The contract reght of priority of payment secured to the holders of bonds & coupons & the contract right secured to tax-payers to use the bonds & coupons at par in payment of the assessments, with the consequent market value of the bonds & coupons governing one of them are material considerations bearing upon the jurisdiction of this court to aid Partee & Stansell in the mode here adopted. These are considerations which petitioners aver have largely influenced the action of parties in interest heretofore; as, for instance, they have induced tax-payers to buy the bonds and coupons and hold them for use in payment of assessments made upon their lands, & in reliance upon the priority of payment awarded to them. Many of those whom petitioners represent do, as petitioners aver, now hold bonds or coupons acquired upon the inducement aforesaid; and both as bondholders and tax-payers they make their plea to the jurisdiction now exercised in
29 behalf of Partee & Stansell.

Passing the question of jurisdiction, petitioners are advised and do now submit to this court a ground of relief to them that the said mandamus decree or order is irregular, improvident, and erroneous, and is matter of grievance to the tax-payers of Coahoma County—

1st. Because of the statute of limitations of the State of Mississippi of three years and of six years said order should not go behind their operation.

2d. Said order or decree makes no exception of course in which tax-payers hold the rece'pts in full of the levee tax collector.

Petitioners that said levee board and claimants through it are estopped now to question their rece'pts, and the assessments upon which they were given.

3. The legislature of Mississippi by its act of 1876, abolishing the original board and substituting the auditor & treasurer, thereupon

fixed the assessment then in force as the assessment for the remainder of the tax period under the act of 1871.

4th. In clause 4 of said order or decree defendants are ordered
30 to "require payment in cash by the land owners within levee district, No. 1 of 50 per cent. of said back taxes & 15 per cent. of total back taxes due in addition, in face of the provisions of the act of 1871 quoted above, that said bonds & coupons shall be receivable after maturity, at par, in payment of any charge or assessment fixed, levied, or made by this act."

5. The unlimited and indefinite power of compromise given to the courts by clause 7 of the order or decree of mandamus is unwarranted by the act of 1871, and conducive to favoritism, corruption, inequality, and fraud.

6. The allowances for compensation made to officers in clause 9 of said order are unwarranted, exorbitant, and in direct violation of the act of 1871.

7. The said order or decree embraces the tax for 1879, which was not at the time when it was made a tax in arrear, or a tax subject to this extraordinary & summary jurisdiction to compel payment in whole or in part in cash.

Besides these grounds of relief, predicated of the order or decree of mandamus on its face, petitioners further allege failure and
31 omission to comply with it, and threaten action under it, greatly injurious to them in carrying it out, as grounds of relief.

1st. They and those whom they represent have rendered to the assessor statements required of them, and the assessor has made assessments different from and in disregard of them, in many instances without the notice to them required by clause 2 of the order.

2nd. The assessor has not made the tabulated statements required by the order. His returns now filed with the com'rs fail to show what particular tract of land is delinquent, or for what year or years it is delinquent. In cases where more than one tract is owned by the same individual delinquencies of the whole plantation in gross are reported, with no specification of what is claimed as due from each tract. Sec. 29 of the act of 1871 distinctly makes the assessment a lien in rem—a tax upon each specific tract.

3. The commissioners, or levee board, as now constituted, have not correctly construed, as petitioners submit, clause 2 of the mandamus order, if they suppose it to require a description or enumeration only of the number of acres owned by each tax-payer, and to justify
32 the mode of assessment referred to above; but if their construction is correct, then the decree itself is in further conflict with the law which it seeks to enforce in this particular. Said board or com'rs have applied the same construction to the portion of said order or decree included in clause 2, which requires them to "place upon the face of said lists the amount of taxes due and owing upon said lands, the amount actually paid and the amount remaining to be paid," &c., and to forward copies to the collector. They have forwarded to the collector of Coahoma County a list or collection-roll, which does not show which tract, when more than one is owned, is claimed to be delinquent, nor in what nor for what year, nor upon what particular land the delinquency is claimed. This list simply sums up the number of acres listed to one man, the gross amount that those acres ought to have paid since 1871, and by a deduction of what has been paid shows a gross delinquency, which tax-payers must either pay blindly or for which his whole land must be sold.

4. Many tax-payers have offered, and perhaps all would have been willing, notwithstanding all that has been stated, to pay the gross delinquency asserted in the past-due bonds or coupons issued by
33 the levee board; but the collector has refused to receive the same except for 35 per cent. of the amount, and has insisted, and will insist, upon the payment in cash of 65 per cent.

5. The collector adds damages, as petitioners believe, as part of his demand. Under the act of 1871, sec. 12, the 15 per cent. damages only accrue when sale for the tax is made.

6. The collector of Coahoma County has not yet sold, or advertised for sale, for this unpaid tax the lands alleged to be delinquent. The time fixed for such sale by the act of 1871, sec. 12, to wit, second Monday in January, has now passed. The mandamus order does not authorize and could not authorize him to sell except in accordance with the terms of the act of 1871; yet J. S. T. Grubbs, who has been by said board appointed the assessor and collector of said county, has given notice that on the 5th of February, now next ensuing, he will advertise the delinquent lands of the county for sale to enforce the payment of the assessment, and will, pursuant to such advertisement, proceed to sell.

The act of the legislature of Miss., passed in 1876, by which the old levee board, created by the act aforesaid of 1871, was constituted and substituting the auditor and treasurer in their stead, makes this
34 tax collectable along with the State and county taxes. It is for this reason perhaps that the collector proposes to advertise the lands in Coahoma Co. in Feb'y next. But if this act is to govern, petitioners submit that it makes this tax collectable only by the sheriffs of the counties composing the levee districts; and that this court cannot appoint any other or different collector.

The mere advertisement of such a sale would greatly depreciate the value of the land for the time, and would greatly embarrass and injure the owners and becloud their title.

The amount now claimed by the collector of Coahoma County to be due in cash, besides the 35 per cent. payable in bonds or coupons, and the collection of which he will proceed to enforce against petitioners and other tax payers of Coahoma County whom, by their authority, they represent in this petition, exceeds the sum of five thousand dollars.

There is a portion of Coahoma County claimed to be subject to this tax, and against which the collector is proceeding to enforce its collection, which petitioners submit to the court is not subject to the tax at all under the terms of the act of 1871, and as to which, for that reason, the collection of the tax should be enjoined. Such lands cannot
35 by any fair construction be considered as part of the "levee district" in contemplation of the act of 1871, being actually by the want of the levee excluded from the district, and from the effect and purpose of the law; a part of the lands thus situated, and without any protection, or semblance of protection, lie in townships 26 and 27, range 6 west, in the county of Coahoma; and townships 26 and 26 of range 5 west.

In these townships Edmund Richardson and others owning the lands, being excluded from the protection of any levee constructed under the act of 1871, have been driven to construct private levee' at great expense and maintain them, an expense greatly in excess of the tax imposed. They have nevertheless paid taxes according to the existing laws of 1871 and 1876, in the bonds and coupons of the levee board of said district, and they have offered to pay the said tax as now demanded on the revision of the assessment ordered in this cause; and i

the petitioners of this class, having received no equivalent for the tax and no benefit from the levee, are compelled to bear the burden of the tax, they ought to be deprived of the privilege secured by the law to pay in the levee bonds and coupons; they are the holders of bonds
36 matured and they here call attention to the fact that these bonds are receivable for the levee tax, and it is so stated on the bonds themselves, and thus all purchasers and tax-payers are assured that they are receivable for the tax; therefore, they ask in addition to the relief which is herein asked as belonging to the whole class of tax-payers that the court will take into consideration the peculiar circumstances and condition of the class herein last named and give appropriate relief.

The petitioners presenting this petition are D. M. Russell, W. H. Stovall, and H. P. Reid, named above, and also all of the tax-payers, of whom this levee tax is sought to be collected, owning lands in Coahoma County. The names of all are not set out in the body hereof because of their number, but there is filed herewith, marked Exhibit B, a printed list believed to contain the names of all of those against whom this claim for unpaid levee tax is being asserted, together with the amount of tax claimed in cash and in bonds. For fuller certainty as to the names, and for the description of the lands owned by each, and the amounts claimed against each, reference is here made to the assesments, as now on file with the defendants, levee commis-
37 sioners, and the same are made part of this petition as fully as if filled herewith. And said petitioners now here submit to the decision of this court the question herein raised, and now here offer to pay any tax in the premises upon their lands for which they are legally bound.

The prayer of petitioners is that they be allowed to intervene in this cause by this petition for their own protection, and that, upon such notice to the original parties, compl't and def'd't, to the cause, as may to your honor seem proper, the grievances herein presented be considered and redressed. They ask—

1st. That the said order or decree of mandamus be wholly revoked and annulled, and all proceedings under it perpetually enjoined, upon the grounds herein alleged of want of jurisdiction in the court to make it.

2nd. If mistaken in this, that the said order or decree be partially revoked, or modified in the respects hereinbefore indicated, in which it is conflict with, or in excess of, the terms and provisions of the act of 1871, aforesaid, creating the levee board, or the act of 1876, aforesaid, substituting the auditor and treasurer in the stead and
38 place of said board, especially they ask that so much of said order or decree be vacated and annulled as directs said commissioners or said board as now constituted to collect any portion of said tax in cash beyond such portion as was by said laws, or either of them, assessed and levied to be paid in cash.

3rd. They ask that, upon the presentation of this petition, a temporary or provisional fiat or stop order be made and issued by your honor forbidding the levee board, as now constituted, and its assessor and collector for the county of Coahoma to proceed further, until the further order of your honor, in the compulsory collection or enforcement of said tax in the county of Coahoma, and especially forbidding them, until such further order of your honor, to advertise for sale or to sell the lands or any of them, in the said county of Coahoma, for said tax.

4th. They ask that your honor will appoint an early day for the hear-

ing of this petition, and will upon a hearing, by a decree to be rendered by the court, as the decree of the court in this cause, adjudge, upon full consideration, the rights of petitioners and of the other parties
39 to the cause, touching the matters of this petition; and, upon the whole case correct all errors in said order or decree of mandamus, or in any of the proceedings had or about to be had under it, if errors should appear; and fully settle all matters about which contention is herein suggested or herein may be suggested.

5th. As this tax, so far as it may be legally enforced, is a lien upon the lands upon which it sought to be fixed, and abundant security is afforded in the premises by such lien, petitioners ask that no security be required of them or of those whom they represent.

And they will thus ever pray, &c.

W. P. AND J. B. HARRIS, AND
CRAFT AND COOPER,
Sol's for Petitioners.

Filed 1st day of Feb'y, A. D. 1881. G. R. Hill, clerk.

Injunction issued Feb'y 8th, 1881.

G. R. HILL, *Clerk.*

Exhibit decree.

The decree of date Feb'y 7, 1880, referred to in the foregoing petition and made an exhibit thereto, will be found copied into this record on page nine (9).

40 *List of names of tax-payers and amounts assessed against them in currency and bonds under the decree in U. S. circuit court in the case of Stansell vs. Levee Board, District No.* 1.

	Currency.	Bonds.		Currency.	Bonds.
Arrington & Sherard ..	$63 70	34 30	Busby, Mrs. N	58 90	31 50
Allen, Thos. H.	8 97	4 83	Brown, I. N. (agent) ..	74 43	40 07
Armstead, Charles	97 50	52 50	Barbee, A. J	631 80	340 20
Andrews, Isham	7 48	4 02	Barbee, J. E	85 74	46 16
Armstead, Lonis	43 88	23 62	Childress & Co.....	61 64	33 18
Allen, Thos. H. & Co..	48 10	25 90	Clarke, S. L	4 68	2 52
Allen, Julius	2 93	1 57	Clarke, C. B.....	14 63	7 87
Adkinson, S. E	48	28	Cagle, L	8 45	4 55
Adkinson, John	13 46	7 24	Clark, John	476 65	256 65
Alcorn, W. A. (guar.) ..	59 26	31 90	Chears, S. D	174 33	93 87
Banks, Dan	36 47	19 63	Cammack, W. H. R....	12 97	6 98
Bobo, J. P	71 24	38 36	Childress & Brown	15 44	8 30
Boyce, A. K (estate)...	127 86	68 84	Calhoun, Joe	6 50	3 50
Bishop, M. A., & B. C. Nicks	24 42	13 14	Calloway, W. B.....	29 90	16 10
Bobo, R. E	203 19	109 41	Cagle, L. C.....	4 88	2 62
Bobo, A. K	172 45	92 85	Cunningham, George ..	6 10	3 28
Beard, J. B	7 80	4 20	Cammack, B. & R.....	205 08	110 42
Bomar, J. H	11 12	5 98	Childress, D. L	415 64	223 86
Boyd, Fannie	44 14	23 76	Collins, M. B.....	28 66	15 43
Brown, J. D	88 79	47 81	Cammack & Irvine....	149 11	80 29
Boyd, J. W	43 16	23 24	Carson, J. & J. G.....	112 26	60 44
Batts, Emma	18 20	9 80	Crowley, J. W	46 48	25 02
Brown, A. J.....	85 82	46 20	Cammack, E. L.....	143 00	77 00
Brougher, Tom	20 00	10 76	Cornwell, F.....	101 81	56 41
Billingsley, J. R. (e'r)...	49 08	26 42	Carnes, J. B.	6 41	3 45
Branch, B. O.....	45 69	24 59	Dillard & Coffin.....	151 79	81 72
Bankhead, C. M.....	236 93	127 57	Davis, R. S.....	60 13	32 37
Byrnes, Tom	254 93	137 27	Davis, Stephen	7 84	4 22
Burress, T. B.....	79 62	42 86	Duboy, John	91 52	49 28
			Dickerson, W. H.....	192 95	105 45

	Currency.	Bonds.
Eldridge, J. W	1,475 17	794 31
Edwards, Janie	68 69	36 01
Elliott, T. W	6 83	3 76
Fleece, Geo. B	369 20	198 80
Fuller, Caroline	20 80	11 20
Fowler, Wesley	2 96	1 58
Fant, J. B. & C. H	467 10	252 50
Fant, C H	9 75	5 25
Flagg, Eustace	7 28	3 92
Gibson, W. A	2 21	1 19
Ganong, W. L	2 07	1 11
Gregory, James	16 58	8 92
Garrett, Charley	29 25	15 75
Ganong, L. J	37 38	20 12
Gillock, M	92 28	50 22
Gaines & Washington	15 93	8 57
Haynes, Caleb	32 47	19 01
Hicks, C. F. (est)	3 06	1 49
Hopson, H. H. (est)	162 83	87 67
Henderson, J	19 06	10 26
Harrington, B. (est)	122 63	66 01
Hamilton, John O. (H. P. R)	11 38	6 12
Hall, James	166 40	89 60
Hull, Isaac (agt)	108 50	58 40
Harris, R. N	4 09	2 19
Hewson, Wm	43 23	23 27
Hooker, T. B	135 46	72 94
Hunt, John T	110 18	59 32
Hopson, Morgan	219 31	118 09
Hazen, M. (ag't)	110 76	59 61
Haynes, W. A	5 20	2 80
Haynes, J. G	243 17	130 93
Haynes, A. J	55 25	29 75
Isbell, W. M	2 60	1 40
Irvine, S. B	112 78	60 73
Justh, E	29 68	55 12
Jones, R. S	423 09	227 81
Jefferson & Hughes	325 00	175 00
Julian, J. A	12 35	6 65
Jones, Ned	3 25	1 75
Jenkins, N. J	11 73	6 32
Johnson, L	8 19	4 41
Johnson, H. T	122 09	65 73
James, Ben	2 25	1 21
Jones, M	126 10	67 90
Jarnigan, M. P	157 82	84 98
Joshua, C. W	4 88	2 62
Jeffries, J. K	21 84	11 75
King, Tucker	3 25	1 75
Killebrew, James B	7 15	3 85
King, C. W	32 63	17 57
Kross, George	44 85	24 15
King & Anderson	256 49	138 11
Lombard, E. G	3 25	1 75
Leslie, G. W	24 38	13 12
Lombard, E. H	366 68	197 44
Lilly, Rina	29 58	15 92
Leavell, George B	26	14
Lawler, L. G	78 00	42 00
Lewis Isaac	17 23	9 27
Lacy, Brooks	5 20	2 80
Leavell, N. K	63 96	34 44
Lea, N. W	9 90	5 32
Legg, P. C	37 05	19 13
Logan, C. A., Mrs	23 40	12 60
Linden, H. B	49 01	26 35
Lindsley, E. A	200 53	107 97
Lindsley, N. L	201 72	108 38
Lawler, B. W	177 73	95 77
Montroy, H. C	4 84	2 60
McNeil, Malcom	48 10	25 90
McGehee, W. T	64 61	34 79
McNeill, H. C	198 59	106 92
Maguire, George B	2 73	1 47
Mitchell, W. E	124 95	67 28
Mitchener, R. L	859 69	462 91
Murphy, P. J	113 62	61 18
Mackey, John	12 63	6 80
Martin, Lewis	22 75	12 25
Montroy, F. M., jr	2 60	1 40
Montroy, F. M	4 55	2 45
Matthews, Mrs. H. P. R.	43 88	23 62
Moore, James	6 30	3 39
Moore, J. A. & W. K., & Mrs. Sims	63 87	34 39
Miles, Mary E	59 87	32 23
MaGee, Miss Julia	3 25	1 75
Maynard, M. L	33 23	17 89
Maynard, M. E. (heirs)	78 00	42 00
Maynard, D. B. (est)	457 93	246 57
McIntosh, Perry (est)	8 13	4 37
Mask, H	344 18	185 32
Norfleet, Mrs. A	51 73	27 85
Nichols & Bros	307 26	165 44
Oldham, Mos s (est)	214 35	115 41
O'Bar, Elias	9 75	5 25
Oliver, Matt	19 15	64 15
Paine, F. A. & J. C	34 45	18 25
Pyron, Eli	5 85	3 15
Prince, Henry	10 66	5 74
Pyron, E. E	19 83	10 67
Porter, Mrs. C. A	139 43	75 07
Penny, C. C	160 80	86 57
Penny, W. L	7 80	4 20
Peace, J. A. (guardian)	53 44	28 77
Page Bros	104 95	56 51
Peacock & Powell	493 14	265 53
Parks, N	37 70	20 30
Perkins, P. M	128 70	69 30
Patterson, F. M	62 53	33 67
Pittman, J. A	21 59	11 61
Pittman, J. G	199 88	107 62
Pittman, Mrs. B	52 98	28 52
Page, Wm	2 86	1 54
Powell Bros	256 70	138 20
Priddy, M. C. (ag't)	151 99	81 83
Richardson, E	876 82	472 12
Rozell, B. L	318 11	172 29
Rambo, Aaron	28 93	15 57
Reddick, Mrs. R	247 85	133 45
Reynolds, O. E	26 00	14 00
Rucks, S. D	8 00	4 30
Renfro, P. J	143 00	77 00
Russell, D. M	4 93	2 65
Rozell, A. B	522 54	481 36
Rogers, J. E	85 09	45 81
Reid, H. P. (att'y)	149 00	80 29
Rozell, C. W. (est.)	740 61	398 79
Rainey, W. F	197 86	106 54
Rainey, W. A. & H	187 20	100 80
Springfield, B. C	361 92	194 88
Simpson, S. J	38 35	20 65
Sessions, Lucy A	9 75	5 25
Scott, Mrs. V. A	55 12	29 68
Scheider, H	34 44	18 53
Suddoth, J. A	37 38	20 02
Sims, John	11 05	5 95

	Currency.	Bonds.
Stuart, E	167 31	90 09
Shotwell, W. G	482 63	259 87
Stewart, Wm	865 99	466 29
Shotwell, Nelson	4 55	2 45
Smith, Leonard	108 11	58 21
Shaw, W. W	5 79	3 11
Suddoth, A. D	37 76	20 31
Smith, W. L	164 13	88 37
Sadler, Wm. R	82 54	44 43
Saunders, Spencer	20 35	10 95
Suddoth, E. M	37 78	20 34
Simmons, J. L	130 64	70 34
Stovall, W. H	133 35	71 79
Thompson, Chenley	8 13	4 37
Terrell, R. S	5 72	3 08
Tomlinson, E. A. (heirs.)	25 48	13 72
Thomas, Lewis	125 58	67 72
Trimble, Mrs. A. M	151 45	81 55
Thompson, Jake	1,654 49	890 87
Thomas, E	1 45	77
Thomas, Edmond	3 25	1 75
Top, George	84 52	45 50
Van Eaton & Cobb	50 37	27 12
Vanderver, J. E	16 90	9 10
Ward, Joe	33 15	17 85
Ward, Lucy J	30 88	16 62
Warren, J. A	63 83	34 37
Warren & Russell	591 50	318 50
Wilkerson, W. & Co	652 44	351 30
Wall, S. E	16 90	9 10
Wainwright, A. O	136 45	73 46
Watson, Asa	23 99	12 91
Wainwright, W	238 18	128 25
Waters (heirs)	75 82	40 82
Wishart, Willis	35 33	19 01
Wright, A. E	31 27	16 83
Walton, Tom	54 93	29 57

Respectfully submitted,

R. N. HARRIS.

Exhibit B. Filed Feb'y 1, 1881. G. R. Hill, cl'k.

41 And, to wit, on the 1st day of February, A. D. 1881, a decree was made and entered upon the filing of the foregoing petition, which is in the words & figures following, to wit:

Decree on petition.

In the district court of the United States for the northern district of Mississippi.

JEPTHA W. STANSELL, SURV'ING PARTNER of the firm of Partee & Stansell,
vs.
S. GIVEN & W. L. HEMINGWAY, AUDITOR and treasurer of the State of Mississippi & ex-officio levee board of the State of Mississippi, district No. 1.

The petition of D. M. Russell, W. H. Stovall, and H. P. Reid, tax-payers of Coahoma County, Miss., filed on behalf of themselves as such tax-payers, and on behalf of all the tax-payers of the said county of Coahoma, owners of lands subject to levee tax in the said levee district No. 1, in said county of Coahoma, asking relief touching the matters of a decree of mandamus heretofore made by me in this cause, has been this day presented to me at chambers, in Jackson, Miss., upon the prayer of said petition, and the consent of counsel for
42 the petitioner, upon whose prayer said mandamus decree was mape, J. W. Stansell, surviving partner, &c. I do hereby order—

1st. That said petition be filed in this cause, as of this date, by the clerk of the district court of the United States for the northern district of Mississippi, without security for costs or otherwise.

2d. That the second Monday in March next is hereby fixed for the hearing of said petition, at chambers, in the city of Jackson.

3d. That the defendants, S. Given and W. L. Hemingway, and complainant Stovall, and the collectors appointed by said Given & Hemingway, to collect the levee tax herein involved are forbidden until

the further order that may be made herein to proceed with the compulsory collection of said levee tax in Coahoma County, and forbidden to advertise for sale or to sell lands in said county of Coahoma for said tax; but said parties are not in any way restrained from receiving said tax whenever it may be voluntarily paid according to the terms of said mandamus decree.

4. That said petitioners are required, so far as they possibly can, to procure and file in this cause, by the day fixed above
43 for the hearing of the petition, the written authority of the tax-payers of Coahoma County to petitioners to represent them, and the written promise and obligation of said tax-payers to be bound each for himself, and not in any manner as surety for the other, by the result of this proceeding touching the said mandamus decree, and the tax therein ordered to be collected whenever the same shall be finally decided by this court and, in case of an appeal, by the Supreme Court of the United States.

5. That upon the filing of this petition the restraining order provided in clause 3 hereof be issued by the clerk of said court, at Oxford, unless the same be waived by said Stovall and said Given and Hemingway in writing.

6th. That all questions of law herein involved are reserved to the hearing, as to which this decretal order is to be without prejudice.

Thus ordered at chambers this 1st day of February, A. D. 1881.

R. A. HILL, *Judge*, &c.

Filed Feb'y 1st, 1881. G. R. Hill, clerk.

44 And afterwards, to wit, on the 8th day of February, A. D. 1881, an injunction was issued upon the foregoing petition under the fiat of the judge, in the words & figures following, to wit:

Writ of injunction.

The President of the United States to S. Given and W. L. Hemingway, auditor and treasurer of the State of Mississippi, ex-officio levee board of the State of Mississippi, district No. 1, and Jeptha W. Stansell, surviving partner of Partee and Stansell, and the collector appointed by said Given and Hemingway to collect the levee tax of Coahoma County, Mississippi, under and by virtue of a decree of mandamus rendered by the district court of the United States for the northern district of Mississippi, in the case of Jeptha W. Stansell, surviving partner of the firm of Partee and Stansell, against S. Given & Wm. L. Hemingway, auditor & treasurer of the State of Mississippi, ex officio levee board of the State of Mississippi, district No. 1, on the 7th of February, 1880, and their agents, attorneys, and
45 all persons for them concerned, and to the marshal of the southern district of Mississippi, greeting:

In our district court of the United States for the northern district of Mississippi, at Oxford, D. M. Russell, M. H. Stovall, and H. P. Reid have filed their bill for relief and for an injunction restraining said ex-officio levee board and its assessor and collector *tro* the county of Coahoma to proceed further until the further order of this court in the compulsory collection or enforcement of said tax in the county of Coahoma, and especially forbidding them, until such further order of this court, to advertise for sale or to sell the lands or any of them in the said county of Coahoma for said tax, and have obtained the same returnable be-

fore the judge of said court, at chambers, in the city of Jackson, on the second Monday in March next.

Therefore we command and strictly enjoin upon you, the said S. Given & W. L. Hemingway, auditor & treasurer, &c., & ex officio
46 levee board, &c., and Jeptha W. Stansell, surv. part., &c., and the said assessor and collector, &c., to desist from any and all further proceedings upon the aforesaid decree of mandamus until the order or decree of our said district court to be made to the contrary.

This obey at your peril, and we command you, the said marshal, to deliver to said defendants a copy of this writ, and have the same before the said court at the time and place aforesaid.

Witness the Hon. R. A. Hill, judge of said court, and the seal thereof, at Oxford, the 8th day of February, A. D. 1881.

[L. S.] G. R. HILL, *Clerk.*

Upon the foregoing writ is the following endorsement, to wit:

"I acknowledge service of the within this 11th day of February, 1881.

"W. L. HEMINGWAY,
"*State Treasurer & Ex-off. Levee Com'r.*"

"I acknowledge service of the within writ of injunction this the 11th day of Feb'y, 1881.

"S. GIVEN,
"*Auditor & ex-officio Levee Com'r.*"

Returned & filed Feb'y 14, 1881. G. R. Hill, clerk.

47 And afterwards, to wit, on the 11th day of May, 1881, a motion was entered herein in the words & figures following, to wit:

In the district court of the United States for the northern district of Mississippi. In equity. At chambers in the court-room, city-hall, Jackson, in the southern district of Mississippi.

Motion.

J. W. STANSELL, SURVIVING PARTNER, &c.
v.
LEVEE BOARD DISTRICT NO. 1. } 187.

On petition for mandamus, &c., and sundry petitions for inj. &c., & for relief, &c.

And now comes the complainant & petitioner, J. W. Stansell, by his solicitor, and moves the court to set aside the restraining order issued at the suit of Russell & others, citizens of Coahoma County, and for decretal order against the parties to the said petition for the reason that the petition, on its face, shows no equity and no reason why any re-
48 straining order or injunction should be issued, and because as the facts disclosed in the above cause and to be shown at the hearing the relief originally granted was eminently just and judicious, and exactly in conformity with law.

ELLETT & NUGENT, *Sol's.*

Filed May 11, 1881, by order Judge Hill, at chambers.
JAS. M. McKEE,
Clk of the Circuit Court of the United States,
Southern District of Miss.

And afterwards, to wit, on the 11th day of June, 1881, the same being a day of the June term of said court, 1881, a decree was made & entered in this case in the words and figures following, to wit:

Decree on petition of tax-payers.

District court of the United States for the northern district of Mississippi. In equity.

JEPTHA W. STANSELL, SURVIVOR, &C., *vs.* LEVEE BOARD OF MISS., DISTRICT NO. 1 } No. 197.

The petition of D. M. Russell, W. H. Stovall and H. P. Reid, for themselves as tax-payers of the county of Coahoma and State of
49 Mississippi, and on behalf of all other tax-payers of said county, and the petition of Archibald Wright, Thomas H. Allen, & W. C. Folkes and others, tax-payers of the county of Tunica, in the said State, and the petition of A. M. Clayton, a tax-payer of Tunica County aforesaid, praying to be relieved against an order made in the above-entitled cause by the judge of this court, at chambers, on the 7th day of February, A. D. 1880, coming on to be heard, and the same having been fully argued by counsel and maturely considered by the court, and it now at this time in open court appearing to the satisfaction of the court that the petitioners are not entitled to be relieved touching any of the matters in the said petitions contained, except in regard to the taxes of the year 1880, accruing after the first day of January, 1880, which were inadvertantly embraced in the said order. It is, therefore ordered, adjudged, and decreed that the prayer of the said several petitions, except as to the said taxes of the year 1880, be denied and that the said petitions be dismissed, and that the said order made February 7, 1880, be amended by strik-
50 ing out the words "including the tax of the current year" wherever the same occur: and it is further ordered, adjudged, and decreed that the costs of the said petitions be paid out of the taxes collected under & by virtue of the said order.

And isasmuch as it has been questioned whether the said order made on the 7th day of February, 1880, and another order made in the said cause at chambers, on the 4th day of November, 1880, in relation to the collection of the taxes in the county of Tunica ought not regularly to have been made in open court, in term time, and not at chambers, therefore in order to avoid any question of that kind it is further ordered, adjudged, and decreed that the said two orders, so made at chambers be approved, adopted, ratified, and confirmed, except as aforesaid, as the acts of the court in the same manner as if the same had been originally made and passed in open court on the days of their respective dates, and all acts done in pursuance of said orders shall have the same effect as if done in pursuance of orders regularly made in open court and recorded on the minutes.

51 And it appearing to the court, on the consideration of the acts of 1871 & 1876, that the sales of land for the said levee taxes are

required to be made at the same time as sales of land for State & county taxes, it is further directed that sales of land under the said orders shall be made at the times and places appointed by law for sales of land for payment of State & county taxes.

And it is further ordered that the seven per cent. on taxes collected, allowed by said order to the assessor and collector shall, so far as the county of Tunica is concerned, be divided between the sheriff of said county, who made the assessment of said county under said order, and the marshal in the following proportions, to wit, two per cent. to the assessor and five per cent. to the said marshal.

It is further ordered and decreed that the restraining orders heretofore granted to stay proceedings under the said orders be, and the same are hereby, dissolved and discharged. Ordered this the 11' June, 1881.

R. A. HILL, *Judge.*

And afterwards, to wit, on the 27th day of June, 1881, D. M.
52 Russell & others filed their petition for appeal in this cause, which is in the words & figures following, to wit:

Petition for appeal.

To the Hon. R. A. Hill, judge of the district court of the United States for the northern district of Miss., at Oxford:

The petition of D. M. Russell, W. H. Stovall, and H. P. Reid, and of the other tax-payers of the county of Coahoma, State of Mississippi, represented by them and in whose names and for whom they acted in the premises, respectfully shows that in the matter of Partee & Stansell, or of Stantell, surviving partner of Partee & Stansell, against the Levee Board of the State of Mississippi, District No. 1, pending on the equity side of this court, they filed their petition in January, 1881, asking certain relief as in said petition set out. They refer to said petition and to the record of the proceedings in which the same was filed for a more full understanding thereof, and ask that this petition be filed in this cause and as part of said record. Upon said petition a decision was lately, to wit, about ten days ago, pronounced refusing to pe-
53 titioners the relief sought, and refusing them any relief, as appears from the decree & judgment of this court thereupon, entered June, 1881, to which, for the full scope and for the correct date thereof, they here now refer. By this decision petitioners feel themselves aggrieved, and all of said tax-payers in whose behalf the proceeding was instituted feel themselves aggrieved, and petitioners do now for themselves and for and in the name of all of said tax-payers ask that an appeal be granted them to the next term of the Supreme Court of the United States, in order that the same may be by the said Supreme Court revised and reversed. They ask that *that* their appeal shall operate as a supersedeas to prevent and restrain any further proceedings against them until the order of the said Supreme Court thereon shall be had. They now here offer to give the proper appeal bond in such case, and respectfully ask that in view of the facts of the case and of the ample security afforded for the taxes sought to be collected by the lien upon their lands, the amount of the bond be fixed by the court at as
54 low an amount as shall seem adequate to secure the costs and damages incident to the appeal.

W. P. & J. B. HARRIS,
CRAFT & COOPER,
For Petitioners.

I am authorized by Mess. Wright, Folkes & Wright to say that the clients represented by them in a petition which they filed enter in the foregoing prayer for appeal.

HENRY CRAFT.

Filed June 27, 1881. G. R. Hill, clerk.

And, to wit, on said 27th day of June, 1881, the following papers, signed by sundry tax-payers, were filed in this case, to wit:

We, the undersigned tax-payers of Coahoma County, hereby authorize and empower D. M. Russell, Wm. H. Stovall, and H. P. Ried as an executive committee to represent us in the litigation with W. H. Stansell, surviving partner, &c., now pending in the United States court for the northern district of Mississippi, in regard to the district No. 1 levee tax.

B. C. Springfield.
E. Justh,
Pr. E. L. Hudson, ag't.
55 S. J. Simpson.
Armstrong & Sherard.
F. A. and T. C. Payne.
E. A. Lombard.

We, the undersigned tax-payers of Coahoma County, Miss., desire that the tax known as the "Stansett levee tax" be contested in the courts, and we hereby authorize and empower D. M. Russell, H. P. Reid, and Wm. H. Stovall as an executive committee for us to take such steps in that behalf as may be deemed proper and necessary, and we agree to abide by the result of the litigation they may institute or may have instituted in this behalf.

Names.		Names.
T. B. Hooker, paid	$13.55.	his Ned + Parks. mark.
J. K. Jeffries,	2.10.	H. Mash.
J. E. Rogers, p'd	8.50.	M. Gulock.
Caroline Fuller, "	2.10.	Wm. Hewson.
E. M. Suddoth, "	3.80.	Jno. B. & C. H. Faut.
F. M. Patterson.		C. H. Faut.
John T. Hurst.		J. O. Harrelton.
I. Hull.		Mrs. A. V. Summes,
		P'r I. Hull, ag't.
his J. + Andrews. mark.		his John + Atkinson. mark.
Emma F. Matthews.		M. L. Maynord.
her Fannie + Boyd. mark.		J. S. Simmon.
his Caleb + Caynes. mark.		his Wm. + Pages. mark.
R. N. Harris.		A. R. Faut, adm'x.
L. J. Ganoug.		M. E. Maznoud & Maynard, est.
56 W. L. Ganoug.		A. B. Page & Bros.
W. R. Sadler.		Childness & Brown.
N. J. Jenkins.		D. L. Childness.
B. E. Peltman.		J. D. Brown.
E. Stewart.		F. J. Norfleet,

required to be made at the same time as sales of land for State & county taxes, it is further directed that sales of land under the said orders shall be made at the times and places appointed by law for sales of land for payment of State & county taxes.

And it is further ordered that the seven per cent. on taxes collected, allowed by said order to the assessor and collector shall, so far as the county of Tunica is concerned, be divided between the sheriff of said county, who made the assessment of said county under said order, and the marshal in the following proportions, to wit, two per cent. to the assessor and five per cent. to the said marshal.

It is further ordered and decreed that the restraining orders heretofore granted to stay proceedings under the said orders be, and the same are hereby, dissolved and discharged. Ordered this the 11' June, 1881.

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Petition for appeal.

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53 titioners the relief sought, and refusing them any relief, as appears from the decree & judgment of this court thereupon, entered June, 1881, to which, for the full scope and for the correct date thereof, they here now refer. By this decision petitioners feel themselves aggrieved, and all of said tax-payers in whose behalf the proceeding was instituted feel themselves aggrieved, and petitioners do now for themselves and for and in the name of all of said tax-payers ask that an appeal be granted them to the next term of the Supreme Court of the United States, in order that the same may be by the said Supreme Court revised and reversed. They ask that *that* their appeal shall operate as a supersedeas to prevent and restrain any further proceedings against them until the order of the said Supreme Court thereon shall be had. They now here offer to give the proper appeal bond in such case, and respectfully ask that in view of the facts of the case and of the ample security afforded for the taxes sought to be collected by the lien upon their lands, the amount of the bond be fixed by the court at as
54 low an amount as shall seem adequate to secure the costs and damages incident to the appeal.

W. P. & J. B. HARRIS,
CRAFT & COOPER,
For Petitioners.

I am authorized by Mess. Wright, Folkes & Wright to say that the clients represented by them in a petition which they filed enter in the foregoing prayer for appeal.

HENRY CRAFT.

Filed June 27, 1881. G. R. Hill, clerk.

And, to wit, on said 27th day of June, 1881, the following papers, signed by sundry tax-payers, were filed in this case, to wit:

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B. C. Springfield.
E. Justh,
Pr. E. L. Hudson, ag't.
55 S. J. Simpson.
F. A. and T. C. Payne.
Armstrong & Sherard.
E. A. Lombard.

We, the undersigned tax-payers of Coahoma County, Miss., desire that the tax known as the "Stansett levee tax" be contested in the courts, and we hereby authorize and empower D. M. Russell, H. P. Reid, and Wm. H. Stovall as an executive committee for us to take such steps in that behalf as may be deemed proper and necessary, and we agree to abide by the result of the litigation they may institute or may have instituted in this behalf.

Names.		Names.
T. B. Hooker, paid	$13.55.	his Ned + Parks. mark.
J. K. Jeffries,	2.10.	H. Mash.
J. E. Rogers, p'd	8.50.	M. Gulock.
Caroline Fuller, "	2.10.	Wm. Hewson.
E. M. Suddoth, "	3.80.	Jno. B. & C. H. Faut.
F. M. Patterson.		C. H. Faut.
John T. Hurst.		J. O. Harrelton.
I. Hull.		Mrs. A. V. Summes,
		P'r I. Hull, ag't.
his J. + Andrews. mark.		his John + Atkinson. mark.
Emma F. Matthews.		M. L. Maynord.
her Fannie + Boyd. mark.		J. S. Simmon.
his Caleb + Caynes. mark.		his Wm. + Pages. mark.
R. N. Harris.		A. R. Faut, adm'x.
L. J. Ganoug.		M. E. Maznoud & Maynard, est.
56 W. L. Ganoug.		A. B. Page & Bros.
W. R. Sadler.		Childness & Brown.
N. J. Jenkins.		D. L. Childness.
B. E. Peltman.		J. D. Brown.
E. Stewart.		F. J. Norfleet,

J. R. Bellingsley.
his
G. B. + Magun.
mark.
M. B. Callens.
his
Joe. + Ward.
mark.
Edmond Thomas.
King & Anderson.
J. F. Townsend.
his
Jno. + Sims.
mark.
J. A. Pettman.
her
Lucy J. + Ward.
mark.
Jas. B. Killeborne.
his
Elias + Obor.
mark.
Tucker King.
his
Lewis + Armstead.
mark.
Mrs. W. A. Gibson.
C. W. King.
R. S. Davis.
R. S. Terrell.
M. W. Dickerson.
E. E. Pyun.
P'r F. C. Johnson.
A. O. Wainwright.
A. K. Bobo.
For est. J. P. Bobo.
A. K. Bobo.
For est. A. K. Boyce.
A. K. Bobo.
For est. C. F. Hicks.
A. K. Bobo.
H. T. Johnson.
R. L. Melchnin.
John Mackey.
Annie M. Trimble.
57 W. R. Moore.
J. A. Moore.
J. & J. G. Carson.
M. E. Sims.
J. E. Magee.
Per H. I. Lufferce, agent.
B. O. Branch.
W. L. Smith.
James Hall.
E. Thomas.
James Moore.
his
Geo. + Tapp.
mark.

For Mrs. A. Norfleet.
M. N. K. Cammack.
John Clark.
W. W. Shaw.
W. C. Mitchell.
his
Eustice + Flagg.
mark.
D. A. Banks.
J. H. Bishop.
L. M. Hopson.
M. A. Bishop.
W. B. Callaway.
W. C. Nicks.
S. D. Cheairs.
Childress & Co.
his
Lewis + Martin.
mark.
J. A. Suddoth.
P. J. Murphy.
George Kross.
P. C. Legg.
J. B. Healy, sen.
J. W. Boyd.
P. C. Legg, agent.
Asa Watson.
B. W. Lawler, p'd.
Isaac Lewis.
L. C. Cayle.
P. J. Renfroe.
his
Brookes + Lacey.
mark.
W. G. Stonall.
Nelson Shalmett.
Nicholas & Bro.
V. A. Scott.
Wm. M. Isbell.
C. A. Porter.
H. Scheder.
George Cunningham.
W. L. Pemey.
J. A. Peace, guardian.
Aaron Rambo, 2.90.
Wm. A. Alcom.
Grear & Co.
his
Ned + Jones.
mark.
J. W. Crawley.
A. D. Suddoth.
B. & B. Cammack.
C. B. Clark.
Lenora Smith.
Morgan Hopson.
J. H. Anderson.
T. B. Burnes.

S. L. Clarcke.
T. W. Montroy, jr.
Perry McIntosh, est.
A. J. Brown.

his
Wesley + Fowler.
mark.
Mrs. R. Reddick,
P'r Johnson.

We, the undersigned tax-payers of Coahoma County, hereby authorize D. M. Russell, Wm. H. Stovall, and H. B. Reid as an executive committee in our behalf to litigate and defend the suit of Stansett vs. Levee Commissioners of district No. 1, in our names and for us, we agreeing to abide the ultimate result of said suit.

A. E. Wright,		W. A. & H. C. Rainy,	18.70.
W. F. Ramey,	19.80.	J. E. Barlow,	8.55.
E. L. Cammack,		V. A. Newton Cobb,	5.00.
D. A. Haynes,	55.	H. B. Lindin,	5.00.
A. J. Haynes,		T. Walter,	5.50.
Thos. Byrne,	25.00.	J. E. Vandveer,	1.65.
J. T. Haynes,	24.35.	J. A. Lindsley,	
N. L. Lindsley,	$20.05.	Powell Bros,	25.65.

58 Mr. J. G. Haynes is authorized to collect the ten per cent. due the attorneys, as each party signs his name.

H. P. REID,
Secretary of Executive Committee.

Filed June 27, 1881. G. R. Hill clerk.

And afterwards, to wit, on the 1st day of August, 1881, the following appeal bond was filed herein, to wit:

Cost bond in appeal.

Know all men by these presents that we, D. M. Russell, H. P. Reid, W. H. Stovall, R. C. Springfield, E. Justh, S. J. Simpson, Arrington & Sherrard, T. A. & T. C. Rayne, E. H. Lombard, T. B. Hooker, J. K. Jeffries, J. E. Rogers, Carolina Fuller, E. M. Suddoth, Jno. B. & C. H. Fant, C. H. Fant, J. O. Hamilton, Emma F. Matthews, M. L. Maynard, J .S. Simmons, R. N. Harris, A. R. Fant, adm'x, M. E. Maynard, Ned Parks, H. Mask, M. Gulock, Wm. Harrison, F. M. Patterson, John T. Hunt, J. Hull, Mrs. A. V. Simmes, J. Andrews, John Atkerson, Fannie Boyd, Caleb Haynes, Wm. Page, L. J. Ganing, W. L. Ganing, W. R. Sadler, B. E. Pittman, J. R. Bittingsly, M. B. Collins, Edmond
59 Thomas, J. F. Townsend, J. A. Pittman, Elias Obar, Lewis Armstead, C. W. King, W. H. Dickerson, A. O. Wainwright, H. T. Johnson, R. L. Mitchmor, John Mackey, Childress Brown, D. L. Childress, J. D. Brown, W. H. R. Cammack, W. W. Shaw, Eusstice Flagg, J. H. Bishop, M. A. Bishop, W. C. Nicks, Childress, & Co., J. A. Suddoth, George Krosp, P. C. Legg, J. W. Boyd, B. W. Lawler, L. C. Coyle, Brooks Lacey, Nelson Stovall, V. A. Scott, C. A. Porter, George Cunningham, J. A. Peace, guardian, W. R. Moore, J. A. Moore, M. E. Sims, B. I. Branch, James Hall, James Moore, S. L. Clarke, Perry McIntosh estate, Aaron Rambo, Ned Jones, A. D. Suddoth, C. B. Clark, Morgan Hopson, T. B. Burris, Mrs. R. Reddick, N. J. Jenkins, E. Stewart, G. B. Magnur, Joe Ward, King & Anderson, Jno. Sims, Lucy J. Ward, Jas. B. Kellebren, Tucker & King, Mrs. W. A. Gibson, R. S. Davis, T. S. Terrell, E. E. Pynn, A. R. Bobo, for estate J. P. Bobo,

A. R. Bobo, for estate U. K. Boyce, A. K. Bobo, for estate C. F. Hicks, A. K. Bobo, Annie M. Trimble, A. B. Page & Bro., V. J. Norfleet, for Mrs. A. Norfleet, John Clark, W. C. Mitchell, D. A. Banks, L. M. Hopson, W. B. Callaway, S. D. Cheairs, Lewis Martin, P.
60 J. Murphey, J. B. Hickson, Asa Watson, Isaac Long, D. J. Renfroe, W. G. Stovall, Nicholas & Bro., W. M. Isbell, H. Schider, W. L. Penny, L. G. Goulin, J. & J. G. Carson, J. E. Magne, W. L. Smith, E. Thomas, Geo. Tapp, V. M. Montroy jr., A. J. Brown, Wm. A. Alcorn, guard., &., J. W. Crowley, B. & R. Cammack, Leonard Smith, J. H. Anderson, Wesley Towler, A. E. Wright, E. S. Cammack, A. J. Haynes, W. F. Rainey, W. A. Haynes, Thomas Bynn, J. G. Haynes, N. L. Lindsley, W. A. & H. C. Rainey, J. E. Barton, V. A. Newton Cobb, H. B. Linden, T. Walter, J. E. Vandever, E. A. Lindsley, Power Bros. principals, and Henry Craft and L. P. Cooper, sureties, are held and firmly bound unto Jeptha W. Stansell, surviving partner of Parte & Stanstell, in the penal sum of five hundred dollars, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents, this 1st day of August, A. D. 1881.

The condition of the above obligation is such that whereas in the district court of the United States for the northern district of
61 Mississippi, at Oxford, and on the equity side thereof, the abovenamed Jeptha W. Stansell, surviving partner of Partee & Stansell did on the 11th day of June, A. D. 1881, being a day of the June term, 1881, of said court, obtained a decree of said court in his favor in a certain cause there in said court heard 'herein he was complainant and the Levee Board of Mississippi, District No. 1, was defendant; from which decree the said D. M. Russell, W. H. Stovall, and H. P. Reid, and the said tax-payers of Coahoma County, Mississippi, heretofore mentioned as principals herein, prayed and obtained an appeal to the next term of the Supreme Court of the United States, to be held at Washington, D. C.:

Now, therefore, if the said D. M. Russell, W. H. Stovall, and H. P. Reid and the other tax-payers of Coahoma County, Mississippi, hereinbefore mentioned, shall prosecute said appeal with effect, or, failing herein, shall pay and satisfy all the costs of said appeal, then this obligation to be void; otherwise to be and remain in full force and effect.

HENRY CRAFT,
By L. P. COOPER,
His Attorney in Fact.
L. P. COOPER.

Filed Aug. 1st, 1881. G. R. Hill, clerk.

62 And accompanying said bond is the following paper, to wit:

Authority to sign bond.

Know all men by these presents that L. P. Cooper is hereby authorized as my agent and attorney in fact to affix my name as one of the sureties to a cost bond for appeal to Supreme Court of the United States of Russell, Reid, & Stovall, and other tax-payers of Coahoma County, Miss., in case in district court U. S. at Oxford, Miss., of Stansell, survivor of Partlen & Stansell, vs. Levee Board, District No. 1; and also on writ of error bond of Hemingway & Gwin, ex officio Levee Board, District No. 1, in same case. Witness my hand & seal.

HENRY CRAFT. [SEAL.]

Filed August 1st, 1881. G. R. Hill, cl'k.

Finding.

The finding of facts, &c., in this case by the court will be found fully set forth in the opinion of the court attached to this record.

And afterwards, to wit, on the 8th day of August, 1881, in open
63 court the following order, granting appeal, &c., was made and entered, to wit:

Order approving bond & granting appeal.

UNITED STATES OF AMERICA,
Northern District of Mississippi:

At the June term, 1881, in the district court of the United States.

PARTEE & STANSELL
vs.
LEVEE BOARD, DISTRICT NO. 1.

This day came on to be heard the above-entitled cause on the petition of D. M. Russell, W. H. Stoval, and H. P. Reid, for themselves and all the tax-payers of Coahoma County, State of Mississippi, whereby is prayed an appeal against J. W. Stansell, surviving partner of the late firm of Partee & Stansell, from the decree of this court rendered the 11th day of June, 1881; and the said tax-payers having filed their bond for appeal, which is hereby approved, and done all other the things required by law & the orders of the court as preliminary to an appeal therefrom, it is hereby ordered, adjudged, & decreed that the said appeal be, & the same is hereby, allowed in open court. Ordered, adjudged, & decreed this the 8th August, 1881.

R. A. HILL, *Judge.*

64 UNITED STATES OF AMERICA,
Northern District of Mississippi:

I, G. R. Hill, clerk of the district court of the United States for said district, do hereby certify that the foregoing 63 pages hereto attached contain a full, true, perfect, and correct copy of the petition & decree for mandamus, &c., & the proceedings thereunder, by the tax-payers of Coahama County, in said court as the same now appears of record and upon the file in my office in the following cause, to wit: J. W. Stansell, surv. part., &c., vs. S. Gwin & W. L. Hemney, auditor & treasurer of Miss. & ex-officio levee board, dist. No. 1.

In testimony whereof I have hereunto set my name and affixed the seal of said court, at office, at Oxford, this the 8th day of Sept., A. D. 1881.

[SEAL.] G. R. HILL, *Clerk.*

65 *Opinion of the court.*

In the district court of the United States for the northern district of Mississippi. June term, 1881.

J. W. STANSELL, SURVIVING PARTNER, &C.,
vs.
BOARD OF LEVEE COMMISSIONERS, &C. } Opinion.

The questions now for decision arrise upon the application of cer-

tain tax-payers of said levee district to set aside the order heretofore made providing for the collection of the back and uncollected taxes to satisfy the decree heretofore obtained by complainant against said levee commissioners for the building of the levees to prevent the overflow of said district.

The questions presented are of unusual importance to both the complainant and tax-payers, and present unusual difficulties to my mind in arriving at a satisfactory conclusion as to the proper disposition of them, involving, as they do, the powers of this court to enforce its own decrees and the power of the legislature of the State to defeat
66 such enforcement. These questions have been most ably and exhaustively presented and argued by the distinguished counsel on both sides, and have received all the thought and consideration of which I have been capable, with the sole purpose of securing to the complainant his just and legal rights and at the same time avoiding any interference with the just rights of the tax-payers, or of assuming the exercise of any powers not properly belonging to this court.

A brief statement of facts is necessary to a proper understanding of the question presented. The results of the war, among other things, broke down and destroyed the levees which had been erected and maintained upon the Mississippi River front, which had before that time protected the territory embraced within Levee District No. 1 from overflow.

In consequence of the overflows from the river these lands were rapidly loosing their value, to remedy which, the owners of the lands within the district applied to the legislature of 1871 for an act creating
67 and incorporating a board of levee commissioners with power to have rebuilt and maintained the necessary levees to protect these lands from overflow. The act was passed creating the board with all necessary powers; to meet the costs and expenses of the enterprise the following provision was made: "And the lands embraced and included in said levee district shall be and are hereby declared to be and are made chargeable, and liable as hereinafter declared, for all the costs, outlays, charges and enterprises to be made or incurred for the levees, work, and improvements provided for and contemplated by this act, or in maintaining the same. That for the purpose of building, repairing, constructing, and maintaining the levees and works aforesaid, and for carrying into effect the object and purposes of this act, a uniform charge and assessment of two per cent. per annum on the value of every acre of unimproved and improved lands and cultivated lands in said levee district is hereby fixed, levied, and made, which shall continue and be collected in each and every year for the period of
68 twelve successive years from the date of this act, and shall be due and payable annually, on or before the 1st day of September in each and every year for said period, and the valuation of every acre of unimproved land so taxed is hereby fixed for the purposes of this act at five dollars, except Sunflower and Tallahatchie Counties, which shall be three dollars, and every acre of improved and cultivated land at thirty dollars, except Sunflower and Tallahatchie Counties, which shall be twenty dollars, and every acre which shall be improved and fenced, but not cultivated, at fifteen dollars, except Sunflower and Tallahatchie Counties, which shall be ten dollars per acre; provided, that as soon as such improved lands shall have been improved and said uncultivated lands shall have been put in cultivation in any year, the same shall be valued for the purposes of this act at thirty dollars per acre, the intention of the act in its exercise of the taxing power being

that every acre of land cultivated in any year during the period of taxation shall be valued at the maximum assessment, and made liable
69 to taxation accordingly; and in all assessments made the lands designated as cultivated shall be held as such when a crop shall have been pitched therein, or the same shall have been used in any wise for production or for any other use in the year for which the assessment shall have been made."

The foregoing provisions are contained in the 8th section of the act.

Section 10, among other things, provides "that said charges and assessments by this act fixed and made as aforesaid on said lands shall not be subject to repeal, alteration, or suspension during the time for which they are fixed, levied, and made as aforesaid, until all the bonds, obligations, and liabilities of said board shall have been first paid and discharged."

To raise the necessary means for the purposes of the enterprise, the 9th section authorized the board to issue bonds with interest coupons attached, to be sold or otherwise disposed of for the purposes of the act; the interest coupons and bonds, when due, to be receivable in payment of the taxes imposed.

The act provides for the appointment of a tax collector, and
70 his duties, and *and* also the duties of other officers. The most important provisions, so far as they relate to the questions involved in this controversy are found in section 10, and immediately follow the quotation above read from that section, and read as follows:

"And shall any of said charges and assessments not be collected as herein provided, then the holder of any bond or obligation of said board which may be due and unpaid may apply to the judge of the circuit court or chancery court of any district included in the levee district for a mandamus directed to said board, by which said board shall be ordered and compelled to proceed to have collected and paid over said charges and assessments as herein provided, or, instead of said mandamus, the said judges may in their discretion appoint one or more special commissioners with authority to collect and pay over said charges and assessments, and for the collection of such charges and assessments the said commissioners so appointed shall have all the powers given by this act,
71 and shall proceed in the same manner as by this act prescribed to the collectors of said board for the enforcement and collection of the same. And such commissioners, before they act, shall give bonds, in proper penalties, with good and sufficient securities, to be approved by said judges, &c.

The 11 & 12 sections of the act prescribe the manner in which the tax-collector shall collect the taxes, and the mode of sales of the lands in case of non-payment, which shall be for cash. As a mode of classifying the lands, as cultivated, fit for cultivation, and not cultivated, and as wild lands, the 28 section provides: "That every tax-payer of each county within the levee district herein defined shall be, and is hereby, required to file with the levee tax-collector of said county a statement under oath setting forth the number of acres of land which he owns or represents, and on which he is chargeable under this act, the number of acres cleared and uncleared, the number under fence and the number under cultivation; that this statement shall be filed as pro-
72 vided on or before the first day of September in each year, beginning on the 1st day of August, 1871; that in case of failure so to file it the party failing shall be held taxable to the extent of twenty-five per cent. in addition to the amount of taxes which he would

have been otherwise liable for under this act; and that any error remaining in the assessment of the lands of the parties so failing, in consequence of his failure or otherwise, shall not be held to effect in any wise to their lands when conveyed under this act by sale for non-payment of taxes.

The 29 section provides that the tax so imposed shall be held a tax in rem, and that upon failure to pay the same shall be sold and vest a good title in the purchaser, subject to redemption without further assessment.

These are all the provisions that need be quoted from this act to an understanding of the questions presented.

By an act of the legislature approved April 11, 1876, the treasurer and auditor of the State were substituted for the former levee board, and the sheriff of each county for the levee-tax collector, and it
73 was further provided that the assessment of the lands for the year 1875 should remain until otherwise ordered by law, &c.

The concluding section of this act provides for the repeal of so much of the former act as conflicts with its provisions.

Complainant, with one Partee, now deceased, as copartners, contracted to rebuild these levees at certain specified rates, and agreed to receive in payment the bonds of the levee board. They proceeded to rebuild the levees and to receive the bonds in payment, but upon settlement a disagreement arose as to the sum due, and the board refused to deliver any more bonds; the result was a suit on the equity side of this court, and a decree in favor of complainant, as surviving partner, against the present levee commissioners, for the sum of $71,623.67, rendered on the 19 day of June, 1879. Upon this decree an execution was issued and returned by the marshal nulla bona.

Whereupon complainant applied for and obtained an order providing for the collection of the alleged unpaid taxes imposed by the act of
74 1871, and of which complaint is now made.

From the foregoing statements it is apparent that the levee scheme so provided was at the instance and for the benefit of the taxpayers, in order to protect and enhance the value of their lands embraced within the levee district. The board and the commissioners were only their agents, to make and carry out their contracts; the scheme received the proper legislative sanction, and renders the whole proceeding valid, under the rulings of the highest judicial tribunal of the State. (See Williams vs. Cammack, 27 Miss., 209, and Alcorn v. Hame, 38 Miss., 752.)

It is true that many of these lands may have changed owners since this scheme was entered into and since the levees were rebuilt, but they were taken cum onere, and whether held by the original owners or subsequent purchasers, they are alike enjoying the protection and enhanced value resulting from the labors and outlay of Partee & Stansell, and for which every principle of justice and equity demands that they shall be compensated, if it can be done under the
75 legislative powers of this court. The contract of Partee and Stansell was entered into with the board, the agent of the taxpayers, with the charge upon the lands valued and assessed as stated, and the mode for ascertaining the quantity embraced within the different classes fixed and specified to be had each and every year during the period stated. At the time the act was passed and the contract entered into it was doubtless expected that the area to be put in cultivation would, as a consequence of the improvement, be greatly enlarged from year to year, and thus increase the amount of taxes to be collected and

the means of payment of the bonds to be issued, and which it was contracted would be received in payment for the work, but which the board, the agent of the tax-payers, refused to deliver after the work was done, and thereby compelled them to take a money decree for their estimated value, which, it is now insisted, although greatly reduced in amount, is subordinate to the bonds which they contracted to receive. The tax-payers, the contractors, are certainly estopped from setting up
76 this distinction between the bond and complainant's decree, so that this question will not be further considered.

The act of 1871, which must be held, in all its substantial bearings, to be the basis of and constitute a part of the contract between Partee & Stansell and the board, provided that if the taxes and charges were not paid as provided by the act, then the holder of any bond or obligation of said board which might be due and impaid, might apply to a judge or chancellor for the summary proceedings provided for their collection and payment. The fair construction of this provision is that the sum collected should be paid to such claimant, and this provision become as much a part of the contract as any other, and all the provisions of the act, so far as the rights of the creditors were concerned, were by the act itself declared to be irrepealable, and had it not contained that declaration the Constitution of the United States and of this State made that impress upon it. This brings us to consider the effect of the act of 1876, upon which petitioners mainly rely in support of their motion to set aside the order complained of.

77 This act substitutes the present levee commissioners for the former board, and the sheriffs of the different counties for the former collectors. To this there is no objection, as neither change interferes with the substantial rights of the complainant or any other creditor; but so far as it attempts to exonerate the tax-payers from giving in from year to year the quantity of improved and cultivated land, and consequently the payment of the increased taxes upon it, and also the summary remedy for the payment of the back and unpaid taxes, if such was the intention, it must be held as violatory and impairing the contract, and under the constitution null and void. But a fair construction of the act does not justify the conclusion that it was so intended; it *it* does not do so in terms, and we are not to presume that the legislature intended to pass an act violative of the constitution.

The above conclusions are sustained by the cases of Vanhoffman vs. City of Quincy, 4 Wallace, 535, and authority referred to in that
78 case, and other decissions made by the same court since that time, and especially by the recent case of Garnett vs. The City of Memphis, not yet referred to.

This brings us to consider the question of power in this court to enforce this summary remedy.

The order of the court does not undertake to levy the tax or change it. The levy was made by the legislature in the act of incorporation, and further provided that it should not be repealed until all the charges and obligations were paid and discharged.

The same legislative act gave any holder of a past due obligation upon the fund made a charge upon the land embraced within the levee district the summary remedy for its collection.

That this remedy could be enforced by the judges and officers of the State mentioned in the act is not denied. Such being the case this court has the power to adopt the same remedies in favor of a non-resident creditor who has obtained a decree against a resident defendant.

79 This position is sustained by the fol. cases: Ex parte Biddle, 2 Mason, 472; 2 McLean, 556; 6 McLean, 395, 13, 195; 2 Dillon, 598; 92 U. States Reports, 20; and especially Supervisors vs. Rogers, 7 Wallace, 175, and the case of Garnett vs. City of Memphis, above referred to.

The order follows the direction of the act of the legislature, except that the order is made by this court, or the judge in vacation, which objection is not insisted, on account of not being made in term time; and that in the case of the collector in Tunica County, upon the refusal of the sheriff to collect the tax the marshal was appointed in his stead. This was authorized by the rule announced by the Supreme Court in the case of Supervisors vs. Rogers, above referred to, and not in conflict with the ruling in the case of Garnett v. City of Memphis, so much relied upon by counsel for the tax-payers.

This brings us to consider the objection to that portion of the order which requires a portion of these delinquent taxes to be paid in cash, and is the one to which objection is mainly urged. Neither this
80 or any court has power to require the regular payment of taxes, as required by the law, within the time limited in any other than past due bonds and coupons; indeed, the act of 1876 in requiring such tax payments to be paid to the extent of two per cent. in cash was in conflict with the constitution, and not binding upon the tax-payer who paid his taxes within the time prescribed by law.

The taxes required to be collected by the order do not belong to this class, but belong to the class forfeited to the creditor, who may see proper to pursue them in consequence of the failure of the land to relieve them, and pay the taxes within the prescribed period, and who by his neglect has forfeited his right to pay in bonds and coupons; the order permitting 35 per cent. to be paid in bonds and coupons is a concession to the tax-payer. When sales are made the act requires that payment shall be made in cash; this is the result of a failure to pay within the prescribed time; there is no difference in the awards permitting his land sold for cash and paying himself in cash after
81 he has neglected to return his lists and pay within the required time. It is said in argument that the owner may redeem, or rather repurchase, and pay in bonds and coupons, and therefore the back taxes may be paid in the same way. This is an argument the other way, as it required special provisions for such payment, but the parties stand on a different footing; in the case of redemption the board or commissioners are but redeeming their own promises. In the case of the creditor, and especially the complainant who has been compelled to take the reduced value of that which had been promised, it is claiming only that which has long been due him. The tax-payer who either by negligence or fraud has so long delayed discharging the charge upon his land has no just ground of complaint as being required to pay in cash the sum demanded.

It is insisted that it is inequitable to require payment in cash, as the tax-payers relied upon the act of 1876, but at the same time it is said that there is less land now in cultivation than then; if so, the
82 order relieves rather than oppresses the tax-payer. It is also claimed that the assessment and payment of taxes made, though erroneous, is conclusive that the action of the officers in such assessment and correction exhausted all the powers on the subject.

This point is particularly pressed by the able and distinguished jurist and lawyer who made the closing argument for the tax-payers, a gentleman for whose opinions I entertain the highest regard on all ques-

tions, but especially upon questions of law, to which profession he has donated more than half a century. There is, however, one provision of the act of 1871 which has escaped the learned jurist's attention, and that is that for a failure to make the required return the delinquent shall be charged a penalty of 25 per cent. on the amount of his taxes. If it be true, as contended, that the return made is conclusive, and that the tax-collector had no power to add to the assessment-roll that which had been omitted, there was no power to add this penalty; the act certainly was intended that the collector should ascertain the whole quan-

83 tity omitted according to the classification, and then add the penalty, and I am satisfied that this was the case whether the whole or only a part was omitted according to the classification.

The returns made by the tax-payer are to be considered prima facie correct. It is to be only so considered and on behalf of a creditor, for either fraud or mistake is subject to correction, whether in favor of or against the tax-payer for mistake. It would be unjust to make the correction against the tax-payer and in case of mistake not allow him the benefit of the correction. The correction under the order complained of is first submitted to the tax-payer himself. I take it that there have been but few causes in which his return has been disputed, and when such has been the case the order provides a cheap and easy mode for settling the dispute, so that there is no just ground for complaint on this subject.

84 Lastly, the statutes of three and six years' limitation is invoked in behalf of the tax-payers.

To this the answer is that the act of the legislature provides no limitation, and the court cannot supply one.

It is not seriously contended that the limitation of three years could be made to apply if by analogy the exemption of six years could be invoked. It would stop at the filing of the petition, and would include all unpaid taxes since the 7 day of February, 1874. The order does not embrace any taxes due after the 1st day of January, 1880.

After a careful consideration of the question involved, aided by the authorities referred to and the able arguments of counsel on both sides, I am brought to the conclusion that the order made on the 7 day of February, 1880, was authorized by law and the practice prevailing in such cases in the State and Federal courts, and not violative of the just right of the tax-payers.

Therefore the petitions and motions made on behalf of these tax-payers will be dismissed, and the costs of this proceeding paid, as the other costs of the com'r. out of the taxes collected.

R. A. HILL, *Judge.*

Filed June 10th, 1881. G. R. Hill, clerk.

85 I, G. R. Hill, clerk of the district court of the United States for the northern district of Mississippi, do hereby certify that the foregoing 20 pages is a true and complete copy of the original opinion as the same appears on the files in said court.

Witness my hand and the seal of said court, at Oxford, Miss., this the 8 day of Sept., 1881.

[SEAL.] G. R. HILL, *Clerk.*

Cost of proceeding on appeal paid by appellants, $26.15.

(Indorsement on cover:) No. 929. D. M. Russell, W. H. Stovall, H. P. Reid, et al., appellants, vs. J. W. Stansell, surviving partner of Partee & Stansell. N. Mississippi D. C. U. S. Filed 27th September, 1881.

SUPREME COURT OF THE UNITED STATES.

D. M. RUSSELL AND OTHERS, Appellants,

No. 929. vs.

J. W. STANSELL, Appellee.

Appeal from the District Court of Northern District of Miss., in Equity.

H. T. ELLETT, Counsel for Appellee.

TRACY & Co., Printers, 299 Main St., Memphis.

SUPREME COURT OF THE UNITED STATES.

D. M. RUSSELL AND OTHERS, APPELLANTS,
No. 929. vs.
J. W. STANSELL, APPELLEE.

Appeal from the District Court of Northern District of Miss. in equity.

This case is now submitted on two motions made by the appellee:

1. To dismiss the appeal for want of jurisdiction, and for irregularities in the proceeding for the appeal; and in case that motion should not prevail, then,

2. For a certiorari, founded on a suggestion of diminution, to bring up a perfect record of the proceedings in the cause from the commencement to the final decree, including the execution and return thereon.

STATEMENT OF CASE.

The record shows that the appellee, Stansell, as survivor of Partee & Stansell, obtained a decree on the equity side of the District Court of the United States for the Northern District of Mississippi, on the 19th day of June, 1879, against the Levee Board of Mississippi, District No. 1, for the sum of $71,623.67. Failing to obtain satisfaction of this decree, Stansell filed a petition in the same cause, seeking to avail himself of the provisions of the Act creating the Levee Board, for the proper assessment and collection of the charge and assessment imposed on the bottom land in the levee district for the payment of the cost of the levees.

The Act of the legislature referred to is entitled "An Act to redeem and protect from overflow from the river Mississippi, certain bottom lands herein described," and was passed and approved March 17, 1871. It contains thirty-two sections, a small portion

of which will probably be sufficient for a proper understanding of this case.

SECTION 1. *Be it enacted by the legislature of the State of Mississippi*, That a Board of Commissioners, to be styled "The Levee Board of the State of Mississippi, District No. 1," to consist of five members, one of whom shall reside in each of the counties of Tunica, Coahoma, Tallahatchie, Panola and DeSoto, shall be elected by the Board of Supervisors of their respective counties, and they, and their successors in office, shall constitute, and are hereby declared to be a body politic and corporate by the name and style aforesaid, and by said name may sue and be sued, plead and be impleaded, contract and be contracted with, and have perpetual succession for the purposes hereinafter designated.

* * * * * * * * * *

SECTION 3 Gives the said board power to construct, repair and maintain a levee along the river front of the district to the southern boundary of Coahoma county, in order effectually to protect and reclaim the lands in the district

SECTION 6 Defines the boundaries of the Levee District, and declares all the lands embraced therein to be chargeable and liable for the costs and expenses of the levees.

SECTION 8 is as follows: "*Be it further enacted*, That for the purpose of building, repairing, constructing and maintaining the levees and works aforesaid, and for carrying into effect the object and purposes of this Act, a uniform charge and assessment of two per cent. per annum on the value of every acre of unimproved and improved lands and cultivated lands in said levee district, is hereby fixed, levied and made, which shall continue and be collected in each and every year for the period of twelve successive years from the date of this Act, and shall be due and payable annually on or before the first day of September in each year for said period; and the valuation of every acre of unimproved land so taxed is hereby fixed for the purposes of this Act at five dollars, except Sunflower and Tallahatchie counties, which shall be three dollars; and every acre of improved and cultivated land at thirty dollars, except Sunflower and Tallahatchie counties, which shall be twenty dollars; and every acre of land improved and fenced, which shall not be cultivated, at fifteen dollars, except Sunflower and Tallahatchie counties, which shall be ten dollars per acre; *Provided*, That as soon as such unimproved lands shall have been

improved, and said uncultivated lands shall have been put in cultivation, in any year, the same shall be valued for the purposes of this Act at thirty dollars per acre. The intention of this Act, in its exercise of the taxing power, being that every acre of land cultivated in any year during the period of taxation, shall be valued at the minimum assessment, and made liable to taxation accordingly; and in all assessments made, the lands described as cultivated shall be held to be such when a crop shall have been pitched thereon, or the same shall have been used in any wise for production, or for any other use, in the year for which the assessment shall be made."

SECTION 10 is as follows: "*Be it further enacted*, That the charges and assessments fixed, levied and made as aforesaid by this Act, shall be, as they are from time to time collected, and they are hereby constituted a special fund and trust to be used by said board; first, in payment of any bonds that may be sold or used as before provided under this Act, and any money that may be borrowed under its provisions; secondly, for the payment of any other debts or liabilities of said board, and when collected the same shall be paid into the treasury of said board for the purposes aforesaid. Said charges and assessments by this Act fixed, levied and made as aforesaid on said lands, shall not be subject to repeal, alteration or suspension, during the time for which they are fixed, levied and made as aforesaid, until all the bonds, obligations and liabilities of said board shall be first paid and discharged. And, should any of said charges and assessments not be collected as herein provided, then the holder of any bond or obligation of said board, which may be due and unpaid, may apply to the Judge of the Circuit Court, or of the Chancery Court of any district included in the levee district, for a mandamus directed to said board, by which mandamus said board shall be ordered and compelled to proceed to have collected and paid over said charges and assessments as herein provided; or instead of said mandamus, the said judges may, in their discretion, appoint one or more special commissioners, with authority to collect and pay over said charges and assessments, and for the collection of such charges and assessments the said commissioners so appointed shall have the powers given by this act, and shall proceed in the same manner as by this Act prescribed to the collectors of said board, for the enforcement and collection of the same; and such commissioners shall, before they

act, give bonds in proper penalties, with good and sufficient securities, to be approved by said judge; and such commissioners shall be allowed for their services, when performed, a sum not exceeding one per cent. on the amounts collected and duly paid over by them."

Provision was made by said Act for the appointment by the board of a collector of the levee tax, and by section 28 it was enacted, "That every tax-payer of each county within the levee district herein defined, shall be and is hereby required to file with the levee tax-collector of said county a statement under oath, setting forth the number of acres of land which he owns or represents, and on which he is chargeable under this Act, the number of acres cleared and uncleared, the number under fence and the number under cultivation; that this statement shall be filed as provided, on or before the first day of September in each year, beginning with first day of August, 1871."

By a subsequent Act passed April 11th, 1876, it was, among other things, enacted, "That the offices of Commissioners, Secretary, Treasurer and Collector of Levee District No. 1, as now existing and organized under the laws of this State, approved March 17, 1871, be and the same are hereby abolished; and that the Auditor of Public Accounts and the Treasurer of the State, be and they are hereby constituted and appointed the Levee Board of District No. 1, *ex-officio*, with no other salaries, perquisites, or emoluments, than now pertain to their respective offices. * * * It being the intent and purpose of this Act to substitute the Auditor of the State and the Treasurer thereof, *ex-officio*, as such Commissioners, Secretary and Treasurer in place and stead of the board of levee commissioners, Secretary and Treasurer of Levee District No. 1, now in office."

The record in this case, omitting all the previous proceedings in the cause, commences with the petition filed by Stansell, the appellee, under the 10th section of the said Act of March 17, 1871.

The commissioners, being duly notified, appeared before the judge at Chambers and filed their answer, on which the case was heard without objection, and a decree made on the 7th of February, 1880, granting the relief prayed for in the petition. Record pp. 1, 6.

A year afterwards, (February 1, 1881), a petition was filed by D. M. Russell, W. H. Stovall and H. P. Reid, praying relief against the above mentioned order. (Record 7.)

In this petition they set forth their individual interests as citizens, residents and tax-payers, and they say, "In addition to this their individual character and position in the premises, these petitioners have been appointed an executive committee, petitioner D. M. Russell being chairman, by a mass-meeting of the tax-payers of the said county of Coahoma, whose lands are sought to be subjected under the decree aforesaid to a burden, as in said decree recited, to appear in the name and on the behalf of all of the tax-payers of said county. So it is that petitioners do now, as individual tax-payers of said county, feeling themselves aggrieved, and as an executive committee representing all of the tax-payers of said county similarly aggrieved, present themselves in the above recited cause."

Again they say (Record 13): "The petitioners presenting this petition are D. M. Russell, W. H. Stovall and W. P. Reid, named above, and also all of the tax-payers of whom this levee tax is sought to be collected, owning lands in Coahoma county. The names of all are not set out in the body hereof because of their number, but there is filed herewith, marked Exhibit B., a printed list believed to contain the names of all of those against whom this claim for unpaid levee tax is being asserted, together with the amount of tax claimed in cash and bonds."

By reference to this Exhibit B. it appears that the whole amount of tax claimed from petitioner Russell, in cash and bonds, is $7.58; from Stovall $205.14, and from Reid (*as attorney,*) $229.29. It also appears that the largest amount claimed from any one tax-payer is $2,545.36, assessed to Jacob Thompson. But one other is assessed for over $2,000, and it will not be pretended that either of these persons have given this executive committee authority to represent them.

On the above petition a restraining order was granted, temporarily suspending the collection of the tax, (Record 16). A motion was thereupon made to set aside this restraining order, and for decree against petitioners, (p. 18,) which motion was sustained, the restraining order discharged, and the petition dismissed on the 11th June, 1881, (Record 19).

From this decree the present appeal is prosecuted.

The petition for the appeal commences thus: "The petition of D. M. Russell, W. H. Stovall and H. P. Reid, and of the other tax-payers of the county of Coahoma, State of Mississippi, repre-

sented by them, and in whose names and for whom they acted in the premises, respectfully shows, etc., (setting out the decree of June 11th, 1881, and then proceeding as follows:) By this decision petitioners feel themselves aggrieved, and all of said tax-payers in whose behalf the proceeding was instituted feel themselves aggrieved, and petitioners do now for themselves, and for and in the name of all of said tax-payers, ask that an appeal be granted, etc."

At the time of filing the above petition, to-wit, June 27, 1881, petitioners filed certain papers signed by about two-thirds of the tax-payers named in the above mentioned Exhibit B., and authorizing the said petitioners, "as an executive committee," to represent them, and to take steps to resist the collection of the levee tax in question, (Record 21-23). These papers are not referred to in either of the petitions, nor is it shown for what purpose they are filed. They bear no date, and were evidently prepared before, and in reference to, the filing of the original petition in February, 1881.

The appeal bond contains only the names of the signers of these letters of attorney, indicating the purpose of the counsel to confine the appeal to these parties as appellants. None of them sign the bond, which is executed by the sureties alone, and it is a bond for costs only.

BRIEF.

I.

It is manifest that the three petitioners, Russell, Stovall and Reid, have not, individually or collectively, any such interest as will give this court jurisdiction to entertain an appeal by them. It is not shown that, as to them, the matter in dispute exceeds the sum or value of five thousand dollars. On the contrary it affirmatively appears that their combined interest in the controversy falls short of $450.

The question then, in this aspect of the case, would seem to be whether as an "executive committee, appointed by a mass meeting of the tax-payers, to appear in the cause in the name and behalf of all the tax-payers," they have, in person and by right of representation of others, a sufficient interest in the controversy, in respect to the sum or value of the matter in dispute, to maintain an appeal.

On this question we observe,

1st. An action can be maintained only in the names of those who have the right, legal or equitable. A resolution of a mass meeting, or even a more formal letter of attorney, cannot confer on a mere agent the right to sue in his own name to vindicate the rights, or redress the wrongs of his principals. An apparent exception to this rule exists where negotiable paper is transferred to an agent for the sole purpose of suit, but this is allowed because the legal title passes to the agent by the transfer. So where an agent has a special property, or where a contract is made by him in his own name for his principal, he may sue. But these principles of the law of agency do not apply to a case like this. If this appeal can be sustained at all, it must be upon some other doctrine.

In this case the authority given, was merely an authority to the agents to institute legal proceedings in the names of the principals, which was never done.

2d. The conditions in which a suit in equity may be maintained by some of a large number of persons, having a common interest

in a common object, are clearly defined in *Smith* vs. *Swormstedt*, 16 Howard, 302, referring with full approval to Story's Eq. Pl. §94 to 120 and 126. The rule stated in regard to creditors' bills in §101 of Story's book, to-wit, that the bill must not be filed for any particular interest of the plaintiff, but only where all the creditors have a *common interest* with him *in all the objects of the bill*, we suppose applies as well to all cases of this kind.

Now here is neither a common interest nor a common object. The land liable to the tax is not owned in common, nor is there any common liability. Each man's land is liable for its own tax, and for no other. No tax-payer has any interest that any other person should be relieved of the tax. The grievance of each is distinct from that of every other.

Furthermore, these petitioners divide and arrange the parties they assume to represent into various classes, having different grievances, and seeking relief on distinct and independent grounds. They do not state which of the parties belong to these classes respectively, nor do they show to which class or classes they themselves belong. Thus they say,

a. That *some* of the tax-payers hold receipts in full of the levee tax collector, and as to these, relief is asked on that ground, by way of estoppel. It is not shown who hold these receipts.

b. Again, it is said that the assessor has *in many instances* made assessments differing from those rendered by the tax-payer, without the notice required by the order of court.

c. Again, it is said that *where more than one tract is owned by the same person*, the report of the assessor does not show *which tract* is delinquent.

d. Again, in like cases, *where more than one tract is owned by the same person*, it is said that the levee commissioners have forwarded to the collector a roll that does not show *which tract* is delinquent.

e. Again, it is said that *many tax-payers* have offered, and perhaps all would do so, to pay in coupons and bonds, but the collector has refused to receive them.

f. And lastly, it is said that a *part* of the land owned by *some* of the parties is not really within the levee district, and ought not to be taxed.

It is not stated what tax-payers belong to any of these classes, but it is quite apparent that the parties have not a common interest

or a common object, unless indeed a desire on the part of each tax-payer to get rid for himself of his own taxes, for reasons that may or may not apply to others, constitutes a common interest in a common object. Relief is sought on all these various grounds, in behalf of those who may be able to bring themselves within the scope of the allegations, and it is distinct and independent relief to each individual tax-payer, depending on the facts of his particular case. There may be some questions of law or of fact that are common to all the tax payers, but there is nothing in the subject of the litigation in which they have a joint or common interest. It is a clear case of misjoinder, and the petition ought to have been dismissed by the court below for that cause, if for nothing else.

It is impossible that in such a case as this, "one decree ean bind all the parties the same as if all were before the court," (16 How., 303,) for it is evident that separate decrees, founded on different facts, and different rules of law, will be necessary to settle all the rights, and redress all the wrongs of the tax-payers, as stated in the petition.

If it has thus been shown that these petitioners cannot sue in their own names, on behalf of themselves and all the tax-payers of the county, by reason of the diverse interests shown to exist, or that all the tax-payers in the county could not unite in such a petition, without incurring the objection of multifariousness, then the conclusion is irresistible that the petitioners can not prosecute an appeal on behalf of all the tax-payers of the county, at all; nor can they appeal for themselves only, without showing that the demand made against them, jointly or severally, exceeds the sum of five thousand dollars.

But if it should be thought that this case is one in which all the tax-payers of the county might for convenience join in the proceeding, as was permitted to seamen in *Oliver* vs. *Alexander*, 6 Peters, 143; and to judgment creditors in *Seaver* vs. *Bigelows*, 5 Wallace, 208; and that because of their number a few might sue on behalf of all, still as the interests of the several parties are distinct and separate, and independent of each other, none of the parties can appeal from the decree unless his own individual interest exceeds five thousand dollars.

All the cases belonging to this class, in which this question of the right of appeal has been discussed, seem to have been cases where several persons have claimed to have a lien or charge upon, or to be entitled to satisfaction out of a common fund, or to have an undivided joint interest in the subject of the suit. None of them have been at all like the present, where several persons complain that a single party is endeavoring to do a similar injury to each of them separately, and where without any common interest among themselves, they seek to unite in one joint preventive remedy.

Oliver vs. *Alexander*, 6 Peters, 143, was a libel by seamen of a vessel and cargo for wages.

Stratton vs. *Jarvis*, 8 Peters, 4, was a libel of merchandise for salvage.

Spear vs. *Place*, 11 How. 522, was a libel of a vessel and cargo for salvage.

Rich vs. *Lamber*, 12 How. 347, was a libel by owners of cargo against a vessel, for damage to goods.

Shields vs. *Thomas*, 17 How. 3, was a bill by distributees against an administrator for an account and distribution.

Clifton vs. *Sheldon*, 23 How. 481, was a libel of bales of cotton for freight.

Seaver vs. *Bigelows*, 5 Wallace, 208, was a bill by several judgment creditors to subject property fraudulently conveyed.

Rodd vs. *Heart*, 17 Wall. 354, involved the distribution of the proceeds of a vessel sold under a decree in admiralty.

The Rio Grande, 19 Wall. 178, several libels against a steamer by materiel men, and suits consolidated.

The Connemara, 103 U. S., 754, was a libel for salvage.

The distinction made in these cases between those in which an appeal would lie, and those in which it would not, is broad and well marked.

Where several parties have a common and undivided interest, and claim under one and the same title, they may join, or be joined, in an appeal, notwithstanding the interest of each may not amount to a sufficient sum to give the court jurisdiction, and the fact that the decree goes on to apportion the recovery to the several claimants according to their respective interests, will not affect the right of appeal.

Thus, in *Shields* vs. *Thomas*, 17 How., 3, several distributees joined in a bill against an administrator for an account and distri-

bution, and obtained a decree for a sum above $2,000. Afterwards some of the parties brought a bill in another district to enforce the decree, and obtained another decree by which the amount recovered was apportioned among the complainants, no one being entitled to so much as $2,000. On appeal by the defendant it was held that the whole sum due the representatives of the deceased collectively was the sum in controeersy. They had a common and undivided interest in the claim, and it was immaterial to the appellant how it was divided.

And in *Rodd* vs. *Heart*, 17 Wall. 354, where several creditors were secured by *one mortgage* on a vessel, and all of them were postponed by the decree to mariners and others claiming prior liens, and the mortgagees all united in one petition for an appeal, a motion to dismiss the appeal on the ground that no single mortagee claimed a pro rata share amounting to $2,000, was overruled, the court saying, "it is apparent, that though none of the claims allowed exceeded $2,000, yet *the claim* of the *appellants*, which was disallowed, exceeded that sum." The Reporter's note shows that the decision was understood to rest on the ground that the several claims secured *in a body by one mortgage*, exceeded $2,000.

So, the case of the "Connemara," 103 U. S. 754, was a suit by a set of salvors to recover for a single salvage service. Separate and distinct interests were not united. The service was the joint service of all the salvors. The owners were decreed to pay the salvers for what they, acting together in a common service, had done. The decree was, in legal effect, one decree in favor of all the salvors, they having, as between themselves, unequal interests. And it was held that the owners of the property could not be deprived of their appeal because the court below had seen fit to apportion the recovery among the salvors according to their respective merits, and because some of them got less than $5,000. The mattter in controversy was the amount due the salvors collectively.

On the other hand it is equally well settled that where the matters in dispute are entirely separate and distinct, and are joined

in one suit for convenience and to save expense, the several sums decreed in favor of, or against different persons, cannot be united in order to give jurisdiction on an appeal, (103 U. S., 755).

Oliver vs. *Alexander*, 6 Peters, 143, was a libel against ship and cargo by seamen for wages, and it was held that the seamen properly joined in the libel, but the contract for wages was several and distinct with each seaman, and as the decrees were several and distinct, awarding to each the amount due him, and that as no one recovered a sum sufficient to give this court jurisdiction, no appeal could be brought by any of the parties, although the aggregate sum decreed exceeded $2,000.

Stratton vs. *Jarvis, et. al.*, 8 Peters, 4, was a libel of several packages of merchandise claimed by different parties, for salvage, and a percentage of the gross sales was awarded, and allotted against the several claimants of the merchandise, according to the amount claimed by each. The aggregate salvage exceeded $2,000; but the amount payable by any distinct claimant fell short of that sum. The court held that the salvage service was not entire for the purpose of founding a right against all the claimants jointly; but that the case of each claimant having a separate interest, must be treated as a separate appeal, the salvage chargeable on him constituting the whole matter in dispute between him and the libellant. The appeal was therefore dismissed as to all the claimants.

Rich, et. al. vs. *Lambert, et. al.*, 12 How. 347, was a case of libel by several owners of cargo against a vessel, for damage to the goods. Five separate owners joined in one libel, and other libels, brought separately, were consolidated with it, and a decree was rendered in favor of the several libellants for the amount of damages due to each. Two of them recovered sums exceeding two thousand dollars each; the others recovered smaller sums. The court on motion dismissed the appeal as to all the cases except the two in each of which the amount in the decree exceeded the sum of two thousand dollars, and as to these two reversed the decree on the merits.

The Court, in the case last quoted, vindicate the practice allowing several parties to join in such cases, as deserving commendation and encouragement, the several claims being founded on a common injury and loss, the questions involved depending on the same general rules of law, the same evidence equally applicable to all of them, and the defence usually the same in all the cases. But

they say, "although the proceeding assumes the form of a joint suit, it is in reality a mere joinder of distinct causes of action by distinct parties, arising out of a common injury, and which are heard and determined, so far as the merits are concerned, the same as in the case of separate libels for each cause of action. The same decree, also, is entered as in the case of separate suits. We therefore do not perceive any ground for a distinction as to the right of appeal from a decree as entered in these cases, from that which exists where the proceedings have been distinct and separate throughout."

The *Rio Grande*, 19 Wall. 178, was a similar case to Rich vs. Lambert, and a motion to dismiss the *entire* appeal was overruled, because in reference to two of the claims, the amount of each was sufficient to give jurisdiction.

Spear vs. *Place*, 11 How. 522, was a libel by master and owners of a ship against a schooner and cargo for salvage. The cargo was claimed by several persons. The decree adjudged salvage to the aggregate amount of $4,785.14, but the sum decreed against any one owner did not amount to $2,000 and it was held that no appeal would lie by any of them.

Clifton vs. *Sheldon*, 23 How. 481, was a libel for freight against 269 bales of cotton, of which Brower claimed 67 bales, and Sheldon 202. Decree for libellant for $2,338.06, the whole freight on all the cotton, of which Brower was decreed to pay $583.84, and Sheldon $1,754.22, and Sheldon appealed. The appeal was dismissed because the decree against him was for less than $2,000. The court say: "The freight was separately awarded against the claimants in proportion to the cotton shipped by each one. The rights of each were distinct and independent."

In *Seaver* vs. *Bigelows*, 5 Wall. 208, separate judgment creditors united in a bill to set aside a fraudulent conveyance, and subject to their judgments the property so conveyed. Neither of the judgments amounted to $2,000. The bill was dismissed, and complainants appealed. Held, that neither of them could appeal, the interest of each being less than $2,000; nor could they unite so as to give the court jurisdiction. The court say, "to sustain an appeal in this class of cases, where separate and distinct interests are in dispute, of an amount less than the statute requires, and where the joinder of parties is permitted by the mere indulgence of the court, for its convenience and to save expense, would be

giving a privilige to the parties not common to other litigants, and which is forbidden by law."

This case also expressly holds that the jurisdiction cannot be maintained on the ground that the several creditors are proceeding against a common fund, as the other cases already cited had held where the several claims arose from a common injury.

It seems clear that the present case belongs to, and is governed by, the latter class of cases above cited, and that none of the parties to the proceeding in the court below can appeal from the decree, unless the matter in dispute, as it affects him individually, exceeds the sum or value of five thousand dollars.

But if it were conceded that Russell, Stovall and Reid might join in the original petition, and might file it on behalf of themselves and all other tax-payers of the county who might come in and make themselves parties to it, the question would still remain, who, in that aspect, are parties to this appeal?

We insist that the three persons named in the petition are the only parties appealing, and that no other persons could appeal from the decree without having made themselves parties, by name, to the original petition before the hearing thereof.

The petition for appeal purports to be not only the petition of Russell, Stovall and Reid, but also "of the *other tax-payers* represented by them, and in *whose names* they acted." Who these "other tax-payers" are is not stated. The petitioners do not show any authority to represent the entire body whose names are contained in Exhibit B. to the original petition. They could not have all been present at the "mass meeting," and the written authority was signed by only a part of them. These tax-payers were none of them made parties, but were only offered an opportunity to become parties if they should desire to do so. They could not become parties without, in some proper form, coming in and signifying their purpose to do so, though they might be bound by the decree, (Story Eq. Pl. §99-106). If the Executive Committee possessed the power to make them all parties, they failed to exercise it.

The written authority given by some of the tax-payers, and contained in the record, might have been sufficient to warrant the committee in making those who signed it parties to the petition, but it could not of itself have that effect. Besides it was not filed until after the final decree dismissing the petition.

And if wrong in this, and if all these tax-payers were parties to the original petition, then the appeal must be dismissed because they are not named in the petition for the appeal.

It is hardly necessary to cite the authorities for the proposition that a petition for appeal, or writ of error, must set out the names of all the parties to the decree or judgment.

Holliday vs. Batson, 4 How. 645.
Deneale vs. Archer, 8 Peters 526.
Smith vs. Strader, 12 How. 327.
The Protector, 11 Wall. 82.

And all the parties to a joint judgment or decree, must join in the writ of error or appeal, subject to the right of severance where some of the parties refuse to join. See the above cases, and also

Williams vs. Bank U. S., 11 Wheat 414.
Owings vs. Kincannon, 7 Peters 399.
Todd vs. Daniel, 16 Peters 521.
Smith vs. Clarke, 12 How. 21.
Masterson vs. Herndon, 10 Wall. 416.

But where the decree is several, as we insist that the decree in this case necessarily is, the right of appeal belongs of course to each separate party aggrieved by it, subject to the condition that his interest in the matter in dispute is sufficient to give the court jurisdiction.

It is however manifest that Russell, Stovall and Reid are the only appellants before the court in this cause. They are the only persons who ever became parties to the original petition, and they are the only persons named in the petition of appeal. If they may unite in one petition, and aggregate their interests, it is too plain for doubt that this court has no jurisdiction, on account of the insufficiency of the sum or value of the matter in dispute, as affecting these parties.

The appeal by these three persons cannot have the effect to bring up the case as to all the tax-payers of the county.

This case does not belong to the class of which *Smith* vs. *Swormstedt* is a leading example, where a large number of persons are jointly interested in a common subject, all of whom, but for their great number, would be *necessary* parties to any litigation respecting it, and where, on account of the inconvenience of so many parties, a few are permitted to sue, or be sued, as the representatives of the whole. In such cases the parties named represent all the persons interested, as to the whole subject matter in litigation, precisely as if they were the only persons interested, and the presence of the other parties is dispensed with. This is because the interest of the parties named in the record is indentical with that of those not named, and therefore the decree binds all the parties who are thus represented. It follows, of course, that an appeal by the parties named in the record takes up the entire cause as to all the parties whose interests are thus represented.

The present case, if it is one in which the joinder of parties can be allowed at all, belongs rather to the same class with *Seaver* vs. *Bigelows*, and other similar cases cited. where the rights are distinct and separate, and the joinder is allowed for convenience and to save expense; but in which the several cases are nevertheless heard and determined as separate suits, and in which the right of appeal is the same as "that which exists where the proceedings have been distinct and separate throughout," (Rich vs. Lambert, *et supra*). In such cases, if the parties join in the appeal, it is nevertheless the separate appeal of each, and the jurisdiction depends upon the amount in controversy in regard to each of them.

II.

If the motion to dismiss the appeal should be overruled we then ask for a certiorari to bring up the rest of the record.

The proceedings in this record purport to be a part of the proceedings in the original suit of Partee & Stansell vs. the Levee Board, in which the decree was recovered for which we seek satisfaction.

The petition of Russell and others is entitled in that cause; it is addressed to the judge "sitting in chancery;" and on its face professes to be "now by leave of the court filed in the above stated cause." Moreover it refers to the previous proceedings in the cause, and petitioners invoke the consideration "*of the whole*

record of the cause in which this petition is filed;" (Record 8.) and it prays that a decree be rendered "as the decree of the court in this cause," (p. 14).

Points are made in the petition in reference to preceeding parts in the record. It is alleged that Partee and Stansell were not holders of bonds or obligations of, or lenders of money to the Levee Board, and it is assumed that there had been no execution issued on the decree, and no return of *nulla bona*.

As the entire record in the cause was before the court below on the motion to dismiss, it appeared that these points were unfounded, and that no necessity existed for an answer explaining or denying the facts.

So the first order made on the petition of Russell and others, and the final order dismissing the same, (Record, 16, 19) are both entitled in the original case, and both purport to be orders made in that cause.

It is manifest therefore that the entire record ought to have been brought up.

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